

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOILET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they assigned Signal Department employees the work of erecting, installing and maintaining signs and the building of concrete foundations for signal structures;

(2) That the erecting, installing and maintenance of signs and the building of concrete foundations be properly assigned to Maintenance of Way Bridge and Building Department employees.

EMPLOYES' STATEMENT OF FACTS: The work of building concrete forms and concrete structures for use in the support of various signaling appliances on this Carrier is assigned to Signal Department employees.

Also, the construction, maintenance of and repair or dismantling of signs which are mounted on signal facilities, is assigned to Signal Department employees.

The Employees contend that such work should properly be allocated to employees of the Bridge and Building Sub-department.

A claim was filed with the Carrier, that all such work be assigned to the Bridge and Building Sub-department employees, and claim was declined.

The agreement in effect between the two parties to this dispute dated December 1, 1945 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule No. 1 of the effective agreement is identified as the Scope Rule and reads as follows:

"Rule 1. The rules contained herein shall govern the hours of service, working conditions and rates of pay for all employees in any and all subdepartments of the Maintenance of Way Department, but not including:

upon which are superimposed two considerations: (1) its conviction that signal employees are of right entitled to the disputed work under rules, circumstances and conditions existing on this property, and (2) its strong conviction that the best interests of the Carrier will be served by the continued performance of such work by signal employees.

IV. CONCLUSION

The Carrier summarizes its arguments in this case as follows:

1. The scope of Rule 56 I(a) in the Organization's agreement does not precisely and definitely include the disputed work.
2. Rule 56 I(a) may be considered to be doubtful or ambiguous as to the disputed work, but if so, the interpretation of such rule then should be made in light of past practice on the property, and such past practice should be decisive in branding the disputed work as belonging to signalmen.
3. Past practice on this property as well as overwhelming precedent on representative other railroads has been to have the disputed work performed by signalmen, and therefore such work is included within the scope rule of the Signalmen's Agreement by the language therein reading "work generally recognized as Signal Work".
4. Consideration of Carrier's Exhibit A and other material included herein having reference to specifications, instructions and requirements of the Illinois Commerce Commission in connection with the disputed work, leads to the conclusion that B&B forces are unqualified to perform the work claimed for them.

The Carrier therefore submits that the claim of the Organization herein, being in derogation of long established rights of signal forces on the property, being unsupported by the Organization's agreement and being contrary to general practice, should be denied; but the Carrier desires that the Board's award in any event be considered as binding upon all of the interested parties.

All data herein have been discussed with the Organization either in conference or in correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: For consideration here is a general claim which in effect is a request that certain work in connection with the construction of signal structures and signs attached thereto be awarded and assigned to B and B employees covered by the effective agreement.

The Organization took the position that Rule 1, 56 I(a), 56 I(d) and 56 I(j) when considered as a whole in their proper relation, each to the other, clearly delegate the work in question to the Maintenance of Way forces. It was further contended that the work in question could not, as Respondent asserts, be properly performed by Signalmen, in light of the broadness and indefiniteness of the Scope Rule of this (Signalmen) agreement.

The Respondent countered with the assertion that neither the Scope Rule of the Maintenance of Way Agreement nor the various provisions of 56 I, clearly and definitely described the work in question. It was further contended that the work here in question has for a period of more than thirty years been performed by others than Maintenance of Way employees, said period being prior to the time the confronting agreement was executed.

Neither the Scope Rule of the effective agreement nor the cited rules can properly be construed to enumerate or designate the work in question as coming within the Scope thereof, and thus reserved to the Maintenance of Way forces.

The Scope Rule of itself is general in character. It lists positions and does not designate the work inuring to such positions. Nor can the cited rule be said to be definitive to the extent asserted by the petitioners.

To the contrary, the record might reasonably be said to contain evidence that for many years an opposite custom and practice has prevailed.

The Organization has not met the burden of proving its contention so therefore this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the effective agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November, 1957.