

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, on November 9 and 16, 1953, and on a date between July 6 and 9, 1954, they permitted employees of the Signal Department to make repairs and adjustments to a D-4 Caterpillar Tractor Earth Auger.

(2) Roadway Machine Mechanic Foreman G. E. Piper, Roadway Machine Mechanic E. W. Thomas and Roadway Machine Mechanic Helper C. Williams each be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total man-hours consumed by the Signal Department employees in performing the repair work on November 9 and 16, 1953.

(3) Roadway Machine Mechanic C. H. Hercher and Machine Mechanic Helper C. Williams each be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total man-hours consumed by the Signal Department employees in performing the repair work between July 6 and 9, 1954.

EMPLOYEES' STATEMENT OF FACTS: When the D-4 Caterpillar Tractor Earth Auger was purchased by the Carrier, Maintenance of Way employees, holding seniority rights under the Agreement with the Brotherhood of Maintenance of Way employees, were assigned to maintain such type of Roadway Machine.

On November 9, 1953, employees of the Signal Department consumed two (2) hours each in making repairs to the clutch on the D-4 Caterpillar Tractor Earth Auger and on November 16, 1953, Signal Department employees consumed four (4) hours each in repairing the Dozer Pump on the D-4 Caterpillar Tractor Earth Auger. Likewise, on a date between July 6 and 9, 1954, Signal Department employees consumed three (3) hours each in changing the Boom Pole on the D-4 Caterpillar Tractor Earth Auger.

In the event a train breaks down on the road the train crew, if equipped to do so, makes the necessary repairs. They repack and at times rebrass journal boxes; they replace air hose, and broken knuckles; they repair or remove damaged brake beams, they repair any defect in the locomotive which they have the tools and knowledge to handle and which is necessary to keep the train moving. The fact that shop crafts perform this work at terminals and at times are sent on the road to make repairs, does not give such employes right to work to the exclusion of the crew on the road.

Since the caterpillar tractor was similar to machines used in roadway maintenance, the Carrier has had the roadway machine mechanics make the major repairs to the machine here involved. They possessed the necessary skills and equipment to do so. But the fact that they performed some of the work of course did not give them exclusive right to such work, and particularly to the repairs which the signalmen operating the machine could make on the road.

The Employes have offered nothing in support of their claim. The rules and their past application show clearly that they do not have the rights they claim, and the Carrier respectfully requests that the claim be denied.

All data herein has been presented to representatives of the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: In 1952 Carrier's Signal Department purchased a Caterpillar diesel-powered tractor with earth-boring and pole-setting attachment for use in building several hundred miles of pole line as part of a system of Centralized Traffic Control then being installed.

Argument offered in behalf of the Organization is that Carrier "was in violation of the Agreement when on the dates involved it permitted certain (Signal Department) employes holding no seniority in the Roadway Machine Department under the Maintenance of Way Agreement to make repairs and adjustments on a D-4 Caterpillar Tractor Earth Auger."

Organization cites the Scope Rule, which need not be repeated here. Such Scope Rule lists Roadway Machine Mechanic Foreman, Mechanic and Mechanic Helpers. Under Sub-departments and Sub-divisions, it lists numerous pieces of equipment by position designations, such as American Ditcher Engineers, American Ditcher Foremen, Caterpillar Grader Operators and Helpers, etc., in addition to the three Roadway Machine classifications previously noted.

Nowhere does it list the equipment here used. The Organization, however, claims this machine is a Roadway Machine, and, therefore, covered by the Scope Rule; that "any and all repair work performed thereon must, by virtue of the * * * Scope Rule, be assigned exclusively to employes falling within the Scope and Operation of the Maintenance of Way Agreement."

Organization also asserts that:

"While the title classification as 'D-4 Caterpillar Tractor Earth Auger Operator' is not spelled out in the Agreement, at the same time when we refer to the Scope Rule, we find both parties realized

that certain positions and classifications would, no doubt, be added to the Scope of the Agreement, when the parties agreed:

‘. . ., and other employees who fill similar positions hereafter established in the Maintenance of Way Department account changes in Maintenance work.’”

Organization does state, however, that—

“We have not and do not now challenge the right of other classes or crafts to operate such work equipment when it is being operated directly in connection with work exclusively reserved to such classes or crafts. But, just as our Roadway Machine Mechanics and helpers enjoy the exclusive right to repair track motor cars, motor trucks and other mechanized equipment assigned to and operated by other classes of employees, so, too, do we believe such recognition extends to the machine here in question.”

Initially we must repeat our observation that the machine in question is not listed specifically in the Scope Rule.

The diesel engine in this machine naturally generates power. It is power that is used to propel such machine on its track treads. When equipped with the proper tools, such as a blade, it can be used as an earth-moving or snow removal machine. Properly equipped, the power generated by this machine can be used to perform many tasks. In this instance, it was equipped with an earth auger to dig pole holes, and other equipment which permitted it to immediately set the pole for the Signal Department.

We will, therefore, conclude that the piece of equipment here involved, adapted as it was for this Signal Department work, was not a Roadway Machine within the meaning of the Scope Rule of this Agreement.

We must also conclude that the portion of the Scope Rule quoted previously—

“* * *, and other employees who fill similar positions hereafter established in the Maintenance of Way Department account changes in Maintenance work.”

does not necessarily apply here for the simple reason that the machine in question, as equipped and adapted, is being used by and for the Signal Department; and so long as it is used in Signal Department work it remains a part of that Department's equipment.

The respective positions of the parties here are that Organization's members have the exclusive right to make all repairs necessary on this machine, versus Carrier's position that the Organization does not have such an exclusive right.

In reality Carrier is not here contending that all repairs on the machine in question should be handled by Signal Department employees. It is contending that crew members assigned to the operation of this machine have the right, when circumstances so dictate, to make minor repairs within the limit of their capabilities while the machine is being used in the field.

Having already held that the machine in question, adapted as it is for special service in the Signal Department (and Organization is not claiming the right to operate this machine when so used), is not a roadway machine within the intent and meaning of the Scope Rule, we must and will now hold that the making of minor repairs to this machine, by Signal Department crew members assigned thereto in the field, is not violative of the applicable agreement; and further, from the record here made, Organization has failed to prove otherwise.

A denial award is indicated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1958.