

**Award No. 9749**

**Docket No. SG-9324**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Donald F. McMahon, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al:

In behalf of Signal Maintainers J. E. Smith and W. C. Wade, and Assistant Signal Maintainers L. O. Thompson and E. M. Waddey, to be paid for three (3) hours each at their respective overtime rates, for October 4, 1955, account wrecker crane of Hardy Motor Company and outside persons being used to perform signal work in re-setting crossing signal at Montgomery Avenue, Sheffield, Alabama, on October 4, 1955.

**EMPLOYEES' STATEMENT OF FACTS:** The claimants, Signal Maintainers J. E. Smith and W. C. Wade, and Assistant Signal Maintainer L. O. Thompson and E. M. Waddey, are regularly assigned signal employees of this Carrier. Signal Maintainer J. E. Smith and Assistant Signal Maintainer L. O. Thompson having headquarters at Sheffield, Alabama, whereas Signal Maintainer W. C. Wade and Assistant Signal Maintainer E. M. Waddey were headquartered at Iuka, Mississippi, on the dates embraced in this claim.

At approximately 11:45 P. M., Saturday, October 1, 1955, the flashing light signal on the south side of Montgomery Avenue, Sheffield, Alabama, was struck and knocked down by an automobile, resulting in extensive damage to mast base, gate arm and other appurtenances and appliances used in connection with the flashing light signal. Signal Maintainer J. E. Smith was off duty Sunday, October 2, 1955, therefore, Assistant Signal Maintainer L. O. Thompson, who was standing by for such emergencies, was called, and with the help and assistance of Supervisor J. M. Stanfill and bystanders, rolled the signal and gate assembly clear of the street and railroad tracks and made no further repair on the signal on that date.

On Sunday, October 2, 1955, claimants W. C. Wade and E. M. Waddey, who were headquartered at Iuka, Mississippi, were called at 7:00 A. M. and instructed to go to Sheffield, Alabama, to assist claimant L. O. Thompson in making the necessary temporary repairs to the flashing light signal and

tions of the Organization attempt to draw too fine a line and tend to inject too much rigidity into railroad operation when a reasonable amount of flexibility is essential to the welfare of both the employes and the carrier. We do not think that a proper basis for an affirmative award exists."

In Third Division Award No. 6702, Referee Donaldson, involving claim of signalmen identical in principle to the one here presented, where the utilization of a power shovel to lift poles from one pole hole to another was questioned, the Board held that:

"Claim covering time power shovel manned by a Maintenance of Way Department operator assisted in handling poles should be denied."

Thus, the claim which the Brotherhood is here attempting to assert is not only **not** supported by the agreement, but is **not** supported by prior decisions of the Board, claims similar in principle having heretofore been denied.

### CONCLUSION

Carrier respectfully submits it has shown that:

- (a) The effective Signalmen's Agreement was **not** violated, as alleged.
- (b) Claim constitutes a demand that the Board establish a make-work or featherbedding rule, but the Board has no authority to establish such a rule.
- (c) Claim is **not** supported by the principle of prior decisions of the Board.
- (d) Lifting of the highway crossing signal base, mast, gate mechanism, and attachments, weighing approximately 1,200 lbs., onto its foundation did **not** constitute the performance of "signal work" within the meaning of that term as used in the effective Signalmen's Agreement.

Under the circumstances, claim being unsupported by the agreement and without any merit whatsoever, the Board cannot do other than make a denial award.

All evidence presented in support of Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right, after doing so, to make appropriate response thereto and submit any additional facts and evidence which to it may seem proper.

**OPINION OF BOARD:** The claim before the Board is premised on the allegation that Carrier has violated the provisions of the Scope Rule of the effective Agreement between the parties, when on October 4, 1955, Carrier permitted certain work reserved to the Signalmen's craft, to be performed by employes of Hardy Motor Company, outside of this Carrier's employes, and permitted such employes to perform such services and to

use a wrecker crane not the property of Carrier, to assist such outside employe. That by permitting such work and use of equipment as contended here, such action constitutes a violation of the provisions of the Scope Rule as Revised October 23, 1953, of the effective Agreement between the parties. For such violation the Claimants are requesting pay at the punitive rate, as set out in the claim filed.

The Carrier contends that such action permitted here, was a prerogative of management, that the work performed by the automobile wrecking crane, consisted only in lifting the signal equipment then being installed, and setting it on the base, for the reason such equipment weighing some 1200 pounds, was considered as being too heavy for the Claimants to lift into proper position. After the equipment was lifted and set in proper position, the Claimants here completed the process of installation. Such work Carrier contends was not work exclusive to the Signalmen's craft, but was work which requires no special skill as required by employes under the Signalmen's Agreement and such work could be performed which is no more than common labor, which work is not work exclusive to this craft. Carrier contends that it was permitted to have such work as here performed, either by its own employes, or by persons outside its employment, and has in no way violated the provisions of the Scope Rule as herein alleged.

As to the facts of record, the parties appear to be in agreement, but do not agree as to the propriety of manner and method used by Carrier in having the equipment lifted and set in position by employes not of the craft involved and the use of the outside contractors equipment in reaching the desired result.

Claims are made here for pay, for three hours at the punitive rate, and estimated as being a reasonable time in which the work could have been performed by Carrier's employes. The record shows the time actually consumed in having the disputed work performed did not exceed forty minutes.

A review of the record before us, discloses that the Scope Rule of the Agreement here involved, revised effective October 23, 1953, is as follows:

"WHEREAS, the parties hereto have agreed to change the Scope Rule of the effective Signalmen's Agreement.

"NOW, THEREFORE, AGREED THAT:

"The Scope Rule of the current Signalmen's Agreements is revised to read:

'Scope — Rule 1: (Revised — effective October 23, 1953)

'This agreement covers the rules, rates of pay, hours of service and working conditions of employees hereinafter enumerated in Article II — Classification.

'Signal work shall include the construction, installation, maintenance and repair of signals, either in signal

shops, signal storerooms or in the field; signal work on generally recognized signal systems, wayside train stop and wayside train control equipment; generally recognized signal work on interlocking plants, automatic or manual electrically operated highway crossing protective devices and their appurtenances, car retarder systems, buffer type spring switch operating mechanisms, as well as all other work generally recognized as signal work.

Paragraph pertaining to Electrical Workers Lines East, omitted as not herein applicable.

'It having been the past practice, this Scope Rule shall not prohibit the contracting of larger installations in connection with new work nor the contracting of smaller installations if required under provisions of State or Federal law or regulations, and in the event of such contract this Scope Rule 1 is not applicable. **It is not the intent by this provision to permit the contracting of small jobs of construction done by the carrier for its own account.** (Emphasis ours.)

"This agreement effective October 23, 1953, terminates and takes precedence over the Scope Rule made effective December 1, 1952, by the Assistant Vice President's letter of November 18, 1952, to the General Chairman, and shall remain in effect until changed as provided by the Railway Labor Act."

From a reference to the Scope Rule before us, negotiated between the parties, we must conclude that Carrier did contract the work performed by Hardy Motor Company that while the actual work performed may be classified as common labor not requiring the skill of a Signal Maintainer, it was work incidental to the performance of work required of the Signalmen's craft and under the Scope Rule was work which Carrier was prohibited from contracting out.

The claims here should be sustained as to principle, but the amount of compensation allowed claimants should be on a pro rata basis for a period of forty minutes, as the time shown actually required in performing the work by persons outside the Signalmen's craft. There is no evidence before us to support the claims for pay at the overtime rate. See Awards of this Division Nos. 6702 and 6214.

**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 violated the Agreement.

AWARD

Claims sustained only to the extent as set out in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1960.