

**Award No. 10778**

**Docket No. SG-10422**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Eugene Russell, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violated the Scope and other provisions of the Signalmen's Agreement, commencing on or about September 5, 1956, when it assigned or otherwise permitted employees of its Electrical Department to install a flashing light signal in the vicinity of the westbound hump, Brunswick Yard, Maryland.

(b) Signal Foreman A. R. Watkins and the members of his Signal Gang be allowed an amount of time equal to that consumed by Electrical Department employees in performing the above-cited signal work covered by the Scope of the agreement.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to September 1956, long trains which were approaching Brunswick Yard, Maryland, from the east stopped at a turn-in switch located on the main line track approximately 3500 feet from the entrance of the first yard track at the Carrier's West Bound Hump Yard, and after the switch was lined to enter the turn-in track by a member of the crew, the train proceeded on to the yard track in which the train was to enter and depended on hand signals from the rear of the train to advise the engineman when the rear of his train was clear of the main line track.

Invariably, long trains using this yard had to double their train into at least two yard tracks and it was impossible for the engineman to see the hand signals given by the crew member at the rear of the train indicating when his train was clear of the main line track. To alleviate this condition, in May 1955 the Carrier instructed its Electrical Department employees to install a yellow light signal on a telegraph pole at the main line turn-in switch so that the crew member who threw the switch to head the train into the yard lead track could turn the signal light on, and when the train cleared the main line track the crew members on the rear of the train would turn the light off, thereby indicating to the engineman that his train was clear of the main line track.

ployes of the Electrical Department and there was no protest by the Signalmen's organization as to the manner or method of installation.

The Carrier submits that it has shown by competent proof numerous occasions and instances when lights, similar to the one installed at Brunswick, were installed by employes of the Electrical Department of the Carrier whose electricians come under the scope of the Electrical Workers' Special Rules quoted in the Carrier's Argument on "Jurisdiction". The work belongs, and has always belonged to these electrical forces, not to signalmen. The Signalmen's organization has not protested the use of electrical forces to make these installations. It follows, therefore, that the Signalmen's organization has by its own actions conceded that this particular kind and type of work is not " \* \* \* work generally recognized as signal work."

The work done here in installing the light at Brunswick yard properly fell to electrical forces. There is no valid claim coming from employes coming under the scope of the Signalmen's Agreement.

In summary, the Carrier submits that this claim is wholly without merit at parts (a) and (b), that there has been no violation whatever of the Signalmen's Agreement, and that the claim in its entirety ought to be denied. The Carrier respectfully requests that this Division so rule and that the claim in its entirety be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Joint Statement of Agreed-upon Facts is as follows:

**"JOINT STATEMENT OF AGREED-UPON FACTS:**

"About May, 1955, a Light was installed at the east end of Brunswick yard to indicate when the trains pulling into the yard was clear of main track switch.

"About September 5, 1956, a line was run from this light to a point about four poles west of the westbound hump and another light installed and connected with the original light, these lights are operated by a push button switch located at the east end of the yard. These lights flash continuously when turned on.

"The light installed at this westbound hump is a standard marker light unit with yellow roundel, operated by 110 V. circuit."

**"POSITION OF THE EMPLOYES:**

"It is the position of the employes that the signal installed about four poles west of the westbound hump on or about September 5, 1956, in Brunswick yard is recognized as signal work and is covered by the Scope of our Agreement.

"Since enginemen are operating their trains in accordance with the information conveyed by the aspect of this signal, it serves the same purpose as that of any other wayside signal of fixed location, namely that of advising enginemen of a condition affecting the operation of their trains.

"This signal using a standard unit with a yellow roundel also conforms to the Rules Standards and Instructions of the Interstate Commerce Commission, Section 136.22, wherein is stated: 'Aspects shall be shown by the position of semaphore blades, color of lights, position of lights, flashing of lights, or any combination thereof.', by flashing until turned off to indicate to the enginemen that the train is clear of the main track."

**"POSITION OF THE MANAGEMENT:**

"This installation consist of an electric warning light on a pole, power is supplied from power lines in the yard. This light is not actuated by track circuits or signal circuits and power for lighting the light is taken from yard power lines. The light is not classed as a signal."

In addition to the foregoing the Carrier contends that this Division is without authority or jurisdiction to proceed in the disposition of the matter set forth in the Statement of Claim appearing here and protests against and objects to, any proceeding whereby this Division shall assume jurisdiction or undertake authority herein.

This Board must agree with the Brotherhood to the extent that this claim is properly before this Board and that this Board has proper jurisdiction and authority to pass upon the issue here presented and to interpret the Agreement between the parties. The work complained of in this record is not of a regular, routine, or often recurring nature, and in the opinion of this Board is not work specified in, or contemplated by the Scope of this Agreement. This conclusion is reached after a thorough study of this entire record and the review of the approximately two score Awards cited and filed by the parties.

None of the Awards cited in this record or in the briefs filed by the parties involve this Carrier and this Brotherhood. We do not find any awards involving an issue with respect to the identical type work here involved, however, we do find in this record that for a period of more than 25 years similar lights have been installed at various locations on the Baltimore and Ohio Railroad property by its Electrical Force.

The Scope Rule contains no express reference to the work here in dispute. In view of this fact it is proper to examine the conduct of the parties under the Rule to ascertain their mutual intent. The Petitioners' acquiescence in the half dozen or so isolated similar installations made by the Electrical Force over the past 25 years constitutes the only "past practice" in this respect. Under these circumstances we are unable to conclude that the work in question belongs exclusively to the Signalmen. (see Award Number 8291.)

In view of the past practices established by this record and in the absence of the work here involved being specifically included in the Scope of the Agreement your Board necessarily finds that this claim has not been established by a preponderance of the evidence and consequently it cannot be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, 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: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois this 13th day of September 1962.