Award No. 10976
Docket No. SG-9957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement on February 25, 1956, when it assigned to and permitted electricians to make repairs to signal messenger cables which support signal aerial cables at signal bridges No. 1966, 1972, 2794, and 2798 on the Chicago Terminal Division.

(b) The Signal Foreman and Signal Gang Employes of Signal Gang No. 1, who were employed on date of February 25, 1956, be compensated at their respective pro rata rates of pay for the exact hours that the electricians were used to perform the above signal work. [Carrier's File No. 135-213-19 Spl., Case No. 22 Sig., cy 135-213-19.]

EMPLOYES' STATEMENT OF FACTS: Following the elevation of tracks in 1926 the Carrier contracted to the Pierce Electric Company the electrification of its Chicago Terminal Division where electric suburban train service was to be used. The company also did considerable signal work during the electrification project.

Cantenary bridges were installed across the tracks to support the electrical cables used in the electric train service. This Carrier's Signal Department also installed signals used in the signal system on top or suspended them underneath the cantenary bridges.

The signal messenger cables which signal aerial and other cables are attached to between Randolph Street and 11th Place in the city of Chicago, Illinois, were initially installed and have been repaired, maintained, and tested solely by signal employes throughout the years.

From 18th Street to 67th Street the signal aerial and other cables run through a duct line in the ground. This was also installed and has been repaired and maintained by signal employes throughout the years.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railroad Signalmen of America and Illinois Central Railroad Company.

On February 25, 1956 a severe storm damaged Carrier's system. There were 12 — 14 spans of wire down at two locations. The power lines fell across the messenger cable and caused it to fall. The messenger cable supports the signal circuit wiring. Some damage was done to the cable rings that hold the signal cable to the messenger cable. Carrier's electrical gang repaired the power lines and the messenger cable. The work of restoring and replacing the cable rings was done by Signalmen. The Petitioner contends that the work of repairing the messenger cable belongs to them under the Scope Rule. The Carrier contends that the messenger cable is part of a cantenary system and not part of the signal system. The Scope Rule is as follows:

"SCOPE

"This agreement governs the rates of pay, hours of service and working conditions of all employes in the Signal Department (except supervisory forces above the rank of foreman, clerical forces and engineering forces) performing the work generally recognized as signal work, which work shall include the construction, installation, maintenance and repair of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment car retarder systems, centralized traffic control systems, signal shop work, and all other work generally recognized as signal work."

The purpose and use of the messenger cable is to support the signal aerial cables. For this reason we believe that, under the Scope Rule, the work does belong to the Claimants. We find that notice was given to the third party and notice was acknowledged by the third party.

For the foregoing reasons we believe the Agreement was violated.

Signal Gang No. 1 employed by Carrier on the date of February 25, 1956 as determined by the records of the Carrier and entitled at pro rata rate for the hours of signal work performed by others.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10976, DOCKET SG-9957

The messenger cable involved in this claim supports an aerial signal cable, but the messenger itself is attached to and supported by cantenary structures which also support the necessary messenger cables, trolley wires, etc. for an electrified railway system, as well as other high tension power lines. Petitioner agrees that the work involved in maintaining the cantenary structures and the lines, wires and messenger cables which they support, other than the signal cable and the messenger to which it is fastened, belongs to others, not Signalmen.

The Signalmens' Scope Rule does not mention such a messenger cable, but the Petitioner argues that maintaining such a cable is generally recognized signal work. Petitioner crystalizes this issue in its rebuttal statement where it asserts:

> "On Page 7 the Carrier further stated, 'It will be observed that the Scope Rule previously quoted does not mention **messenger cable.**' The Brotherhood directs the Board's attention to the Scope Rule of the Signalmen's Agreement. The rule lists several types of signal systems and signal equipment, and ends by stating, 'and all other work generally recognized as signal work.' . . ."

The "generally recognized signal work" clause in the Signalmen's Scope Rule, which is thus relied upon by Petitioner in this case, was interpreted by us in our recent **Award 10804 (Moor)**; we there said:

> "We are of the opinion that 'all other work generally recognized as signal work,' means generally recognized by the industry as a whole."

> "The Petitioner offers no proof as to what the practice industrywide might be. Therefore since the burden of proof is upon the Petitioner, the claim must fail . . ."

Where is the proof in the case before us? It is admitted that on Carrier's own lines the Signalmen have never maintained messenger cables such as this in "electrified territory", and the only evidence before us concerning practices on other Carriers is the statement in **Award 5286** (Wyckoff) indicating that the petitioning Organization there agreed that on the lines of the Pennsylvania Railroad "maintenance of signal power lines when carried on cantenary poles in electrified territory . . . is admittedly not Signalmen's work.".

Claimants failed to prove that maintaining the messenger cable is generally recognized signal work, therefore part (a) of the claim should have been denied.

Part (b) of the claim which purports to be a demand for monetary allowances to unnamed Claimants was not properly before us and should have been dismissed.

We dissent.

G. L. Naylor
O. B. Sayers
R. E. Black
R. A. DeRossett
W. F. Euker

LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 10976 — DOCKET SG-9957

The first fault with the dissenters' position is that the Carrier made no argument in the record that the work in question was not "generally recognized signal work". By its silence it made tacit admission that it was. The dissenters' reference to Awards 10804 and 5286 is completely irrelevant to this case. As indicated by our dissent to Award 10804, it is in error because it was adjudicated upon a contention not contained in the record and ignored evidence that was presented in the record. Award 5286 is irrelevant because it is founded upon different rules and circumstances.

It is significant to note that the dissenters find no fault with the point upon which Award 10976 was determined; i.e., "The purpose and use of the messenger cable is to support the signal aerial cable. For this reason we believe that, under the Scope Rule, the work does belong to the claimants."

This Board has repeatedly held the character of work or its primary purpose to be the determining factor in deciding to whom work belongs. A striking example of this position is found in Award No. 6214 (SG-6271), Referee Wenke, in which the Board held:

> "Carrier may not let out to others the performance of work contained within the scope of its collective agreements with its employes. None of the exceptions referred to in the scope rule are here applicable nor does the factual situation here presented come within any of the exceptions recognized by the Awards of this Division. Therefore, the question is, was the digging and refilling of this ditch used for installing this parkway cable within the scope of the parties' agreement as above set forth?
>
> "Digging ditches and refilling them cannot be said to be the exclusive work of any class of employes. The classification of this type of work must be determined by the reason for doing it; that is, the primary purpose. See Awards 3638, 4077, and 6165 of this Division.

"Generally speaking we find the work of digging and refilling a ditch or trench in which to lay a cable is work incident to the installation of that which the cable is a part. See Awards 565, 1218, 4543, and 5161 of this Division.

* * *

"In view of the foregoing we find the claim should be allowed . . ."

To like effects see Awards 864, DeVane; 3638, Lewis; 3746, Wenke; 4077, Carter; 4553, Wenke; 5410, Donalson; 6154, 6165, Stone; 7575, Shugrue; and 10051 (SG-9547) Dugan.

The purpose of the work in question was to repair a part of the signal system which had no effect upon the cantenary system or its electromotive power wires and no connection with them except to use the cantenaries for support.

There is no error in Award 10976.

W. W. Altus

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 10976, DOCKET SG-9957

The Labor Member exposes his astonishing lack of knowledge of the record in this case when he states:

"The first fault with the dissenters' position is that the Carrier made no argument in the record that the work in question was not 'generally recognized signal work'. By its silence it made tacit admission that it was . . ."

If this statement were true, we would have an entirely different case; we would have a case in which the claim might be properly sustainable on the basis of the respondent's alleged admission; but the record clearly discloses that this statement is erroneous. In Position of Carrier, after noting that Petitioner contends the Scope Rule reserves this work to Signalmen exclusively, Carrier states:

"The Board has often stated in cases similar to the one here involved, that in determining whether or not the disputed work is included in the catch-all phrase in the Scope Rule, which in this case is **'all other work generally recognized as signal work,'** can only be determined by the existing practice at the time the agreement was consummated . . ." (Emphasis ours.)

Following this indication that the issue to be resolved is whether the work involved is generally recognized signal work and that practices in effect at the time the Agreement was consummated are controlling in resolving this issue, Carrier submits uncontroverted facts establishing that such work had never been done by Signalmen on its own property at the time the Current Agreement was negotiated, and also directs attention to similar practices on other Carriers by citing **Award 5286** wherein the petitioning Organization agreed that on the largest Carrier in the country

(Pennsylvania Railroad) ". . . maintenance of signal power lines when carried on cantenary poles in electrified territory . . . is admittedly not Signalmen's work".

Carrier thus has made a most direct, thorough, and accurate argument on the point that the work in question is not "generally recognized signal work", within the meaning of that phrase in the Scope Rule.

Turning now to the Labor Member's reference to **Awards 6214, 3638,** etc. wherein the Board has ruled that certain commonplace work such as digging ditches and filling them, cutting and clearing brush, moving supplies or dirt and debris, etc. which is commonly performed by employes in several different classes, "cannot be said to be the exclusive work of any class" and therefore the rights of employes to such work in any given case must be determined by looking to the primary purpose for which it is performed. We deem it entirely too obvious to merit discussion that the extremely hazardous work involved in fastening messenger cable to cantenary structures that support high tension lines and trolleys for an electric railway system and maintaining such cable is not so commonplace that it "cannot be said to be the exclusive work of any class". Certainly there is nothing in any of the Awards cited by the Labor Member to support the conclusion that this work could not belong exclusively to the class that maintains the cantenary structures and all other attachments thereto; hence those Awards do not support the decision of the majority in this case.

Since the record indicates that the work involved in this claim has consistently been assigned to electricians, and there is not a scintilla of evidence to establish that this work was generally recognized as Signalmen's work at the time the Agreement was negotiated, the claim should have been denied.

G. L. Naylor
O. B. Sayers
R. E. Black
R. A. DeRossett
W. F. Euker