

Award No. 11028

Docket No. SG-9959

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
PEORIA AND PEKIN UNION RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Peoria and Pekin Union Railway Company that:

(a) The Carrier violated the Signalmen's Agreement effective July 16, 1951, as amended, when on September 12, through 28, 1956, it transferred or otherwise diverted generally recognized signal work covered by the Scope and other provisions of the Signalmen's Agreement, which had heretofore been assigned to and performed by this Carrier's signal employees, to employees who are not covered by and hold no seniority or rights to the signal work embraced herein which is specifically covered by the Signalmen's Agreement.

(b) The six (6) signal employees who were then employed in this Carrier's Signal Department covered by the Signalmen's Agreement, be compensated at their respective pro rata rates of pay for a number of hours equivalent to the number of hours worked by the employees who were not covered by the Signalmen's Agreement, performing the transferred or otherwise diverted signal work on the following dates:

September 12, 1956, 32 hours, painting Illinois River Signal Bridge.

September 13, 1956, 32 hours, painting North Pekin Signal Bridge.

September 14, 1956, 32 hours, painting North Pekin Signal Bridge.

September 17, 1956, 32 hours, decking walk on North Pekin Signal Bridge.

September 18, 1956, 32 hours, painting McGrath Signal Bridge.

September 19, 1956, 32 hours, painting Grove Signal Bridge.

September 20, 1956, 32 hours, painting Hillard Signal Bridge.

September 21, 1956, 32 hours, painting Wesley Signal Bridge.

September 24, 1956, 32 hours, painting Wesley Signal Bridge.

September 25, 1956, 32 hours, painting Wesley Junction Signal Bridge.

September 26, 1956, 32 hours, decking walk on McGrath Signal Bridge.

September 27, 1956, 32 hours, decking walk on Grove Signal Bridge.

September 28, 1956, 24 hours, replacing channel iron under signal mast and base on Wesley Signal Bridge.

All of the above listed hours were consumed by four (4) Bridge and Building Department employees for a total of 408 hours, which is to be divided among the six (6) Signal Department employees for a total of sixty-eight (68) hours each at their respective pro rata rates of pay. This claim to include any work of this nature that has been assigned to employees other than signal employees between the time that this claim was handled on the property and the time that it is decided by the National Railroad Adjustment Board. [Carrier's File B-BofRSofA.]

EMPLOYEES' STATEMENT OF FACTS: Prior to July 16, 1951, the effective date of the current Signalmen's Agreement, there was no Signalmen's Agreement covering the signal employees on this Carrier's property.

In 1930 the Carrier installed a CTC signal system on its property, at which time its Signal Department employees performed the signal work involved in the drilling of rails for the installation of rail bonds, digging foundation holes for signal bridge foundations, pouring concrete and finishing foundations for the signal bridges, erecting the signal bridges on the foundations, installing and constructing decking on the signal bridges, ladders, masts etc., and performed all the painting of the signal bridges and their appurtenances and appliances, some of which are embraced in the instant dispute, and other types of signal work not embraced herein.

Following the installation of the CTC signal system, the Carrier placed its Signal Department and its Bridge and Building Department under one Supervisor, but each department operated individually and the employees remained on separate seniority rosters. The two departments operated under the jurisdiction and supervision of one Supervisor until 1948, at which time the Signal Department was placed under the jurisdiction and supervision of one Supervisor, as it is today.

During the period that the two departments were under one Supervisor, if either department needed assistance or help in the performance of its work, the Carrier assigned employees of the other department to assist in performing the work, rather than hire new men for that department.

On a few separate occasions B&B Department employees were assigned to work with Signal Department employees performing the work in dispute in the instant case, but at no time was the work they performed considered as having been transferred to that department nor was the work considered as B&B Department work. The same is true when Signal Department employees performed B&B Department work.

OPINION OF BOARD: It is the contention of the Claimants that prior to July 16, 1951, the effective date of the current Signalmen's Agreement, there was no Agreement on this property covering the Signal employes. It is conceded by the Petitioner that Bridge and Building Department employes up to 1948 had done some of the painting on signal bridges but denies that at any time the work performed was considered as having been transferred to that Department nor was the work considered as Bridge and Building Department work. Petitioner further contends that it was recognized by the Agreement between the Carrier and Signal Department Employes, effective July 16, 1951, that this was work assigned exclusively to employes under the Agreement, as the language is clear and unambiguous and cannot be qualified nor deviated from by any evidence of custom and past practices on the property.

It is admitted by the Carrier that employes of the Bridge and Building Department were used to paint the signal bridges on days between September 12 and September 26, 1956 and that these same employes were used to replace the decking walks on certain of these bridges on September 26 and September 27, and, also, to replace the channel iron under the signal mast on one of the bridges September 28, 1956. Carrier maintains that its records disclose that Bridge and Building Department employes, as well as Signal Department employes, were used jointly to erect signal bridges in conjunction with the installation of centralized traffic control in September 1930; that during the months of December 1930 and January 1931 the employes of the Bridge and Building Department painted all of the signal bridges under the supervision of that Department; Carrier contends that its records fail to disclose that the employes of the Signal Department have ever painted any of the signal bridges and further contends that all of the work complained of has been considered on this property as being work belonging to the Bridge and Building Department as evidenced by custom and practice on the property and the recognition of this custom and practice by the Company Rules and the contract or agreement between the Carrier and Maintenance of Way employes. Carrier urges that this work complained of has not been exclusively reserved to the employes of the Signal Department by the 1951 Agreement.

The Scope Rule of the effective Agreement reads, as follows:

"SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employes in the Signal, Telegraph and Telephone Department (except supervisory forces and engineering forces) **performing the work generally recognized as signal, telegraph and telephone work, which work shall include the construction, installation, maintenance, repair and renewal 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, electric switch locks, radio equipment and circuits other than on rolling stock, pole lines, cables, signal, telegraph and telephone shop work and all other work generally recognized as signal, telegraph and telephone work." (Emphasis ours.)

The use of the word "maintenance" in the Scope Rule contemplates the proper functioning of the signals.

In considering the following language in the Scope Rule "the work generally recognized as signal . . . work" — we cannot say that this,

or any of the provisions of the Rule, intended to supersede or nullify the practices that had grown up on the property. We must resort to custom and practice on the property to ascertain if the work in question has been generally recognized as signal work (See Award 2436 — Carter; Award 5428 — Donaldson).

There is evidence in the record which establishes that this type of work had been done in the past by Bridge and Building Department employes and that this had been the custom and practice on the property. If the custom and practice was to be changed the opportunity to do so came with the negotiation of the Signal Department Agreement in 1951 (See Award 5428).

Clearly the quoted Scope Rule was not definite enough to remove this work from the Bridge and Building employes nor specific enough to place it exclusively with the Signal Department Employees. (See Award 2932 — Carter; Award 6220 — Kelleher.)

In Award 5747 — (Wenke), we note the following: "When a contract is negotiated and existing practices are not abrogated or changed by its terms such practices are enforceable to the same extent as the provisions of the contract itself."

It having been established that it had been the custom and practice of the Bridge and Building Department employes to perform the type of work involved in the instant case, the Claimants were confronted with the burden of proving (1) that by the language of the Scope Rule it was the intention of the parties to the Agreement to reserve this work exclusively to employes of the Signal Department and (2) to abrogate by the Agreement any past custom and practice on the property. This the Claimants have failed to do.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.

DISSENT TO AWARD 11028, DOCKET SG-9959

The ease with which the majority, that is, the Referee and the Carrier Members, narrow the accepted meaning of the word "maintenance" and completely ignore "repair and renewal" as they appear in the Scope Rule is amazing to say the least.

The majority's assertion —

"If the custom and practice was to be changed the opportunity to do so came with the negotiation of the Signal Department Agreement in 1951 * * *".

when looked at in the light of the parties' clear statement in the Scope Rule that signal work "shall include the construction, installation, maintenance, repair and renewal", raises serious doubt whether it would be humanly possible to write a Scope Rule that would survive the brand of reasoning employed by the majority in this case.

This was not a case where practice need be looked at to determine the intent of the parties at the time they negotiated the Scope Rule. The awards relied upon by the majority are neither impressive nor persuasive.

Not only is the reasoning employed by the majority absurd but most distasteful of all is the fact that this Award tends to rewrite a perfectly clear Scope Rule so that it is now left to the whim and wile of Carrier to say whether Carrier's signal work shall include any of "the construction, installation, maintenance, repair and renewal".

The performance of the majority in this case is certainly a far cry from what Congress obviously had in mind when it provided for a National Board to interpret and apply agreements. Therefore, I dissent.

G. Orndorff
Labor Member