

Award No. 11431

Docket No. SG-10822

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad Company:

On behalf of E. T. Hunt, Foreman C&S Logansport District, S.M. Shaver, Signal Maintainer, Race Tower, Logansport, Indiana, D. S. Higgins, Maintainer C&S, Anoka Tower, Logansport, Indiana, R. E. Hamon, Maintainer Test, Red Key, Indiana, C. L. Pfost, Maintainer Test, North Judson, Indiana, R. E. Brant, Maintainer C&S Ridgeville, Indiana, A. R. McCrosky, Leading Maintainer, C&S Logansport, Indiana, R. L. Hinkle, Maintainer C&S Marion, Indiana, D. W. Seybold, Signalman, Logansport, Indiana, N. L. Woodruff, Signalman, C. R. Handy, Signalman, R. K. Frazier, Signalman, R. L. Bridenthal, Signalman, B. W. Bixler, Signalman, W. L. Baker, Signalman, E. P. Haddox, Asst. Signalman, C. F. Leffert, Asst. Signalman and R. L. Myers, Asst. Signalman of the Logansport District C&S Gangs A and B. For the time worked by two (2) Track Foremen and seven (7) Trackmen, on April 14, 1957, from 6:00 A. M. to 6:00 P. M. assisting to unload telephone poles and crossarms from Kenneth to Star City, Ind. This was in violation of the Scope of the Agreement, entered into by and between The Pennsylvania Railroad Company, Baltimore and Eastern Railroad Company and Telegraph and Signal Department employees of The Pennsylvania Railroad Company, Baltimore and Eastern Railroad Company, when the Carrier diverted or otherwise assigned generally recognized signal work to persons not covered by the Agreement. Namely, the unloading of telegraph poles and crossarms to be used for a maintenance or repair job.

[Carrier's System Docket No. 38 — Northwestern Region Case No. 3]

EMPLOYES' STATEMENT OF FACTS: On April 3, 1957, a sleet and ice storm caused considerable damage to the Carrier's communication and signal lines and poles on the Logansport District. The damage caused by the sleet and ice storm created an emergency condition and necessitated C&S Department employees working a considerable amount of straight time and overtime hours

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: On Sunday, April 14, 1957, a working force of two C & S Foremen and five Signalmen from Inter-regional Gangs with a group of Maintenance of Way employes consisting of two Track Foremen and seven Trackmen were used to unload two carloads of telegraph poles, crossarms and hardware from a work train at various points in Carrier's Northwestern Region where lines and poles had been damaged on April 3, 1957 by a severe sleet storm. Emergency repairs had been completed and service restored on April 12, 1957.

Claimants held various regular positions in the signalmen's craft subject to the applicable agreement and were assigned Monday through Friday, rest days Saturday and Sunday, in the Logansport District of the Northwestern Region. They had been used to perform the work of restoring the damaged communication and pole lines to service during the period from April 3 to April 12, and filed a claim for the amount of time worked by the Maintenance of Way forces in unloading the poles, crossarms and hardware on Sunday, April 14, 1957.

The claim is predicated on the contention that the Carrier violated the provisions of the applicable agreement when it assigned the work of distributing and unloading the telegraph poles, crossarms and hardware to persons not covered by that agreement. In support of this position, the Employees cite the Scope Rule of the agreement which refers to the "installation and maintenance of signals, interlocking, telegraph and telephone lines and equipment . . . and all other work in connection with the installation and maintenance thereof that has been generally recognized as telegraph, telephone or signal work. . . ."

The record does not establish that the work in question was the exclusive work of signalmen because such work either "has been generally recognized as telegraph, telephone or signal work" within the meaning of the Scope Rule or has been historically and traditionally performed by the employees covered by that Rule.

The Employees also contend that the disputed work was the exclusive work of Claimants under the "immediate use" concept suggested in Award 5046 where it was said:

"The material being moved was being distributed between Signal Maintainers stations. It was not being hauled insofar as the record shows in connection with its actual use in signal construction or maintenance work. Under the previous awards of this Division, the work in question was not the exclusive work of signalmen. Until it becomes an integral part of a signal construction or maintenance job, the signalmen have no exclusive right to its handling. Consequently, work in connection with the moving of materials to be used by signalmen at some future time is not exclusively signalmen's work. But work in connection with the movement of such materials from a warehouse or a material yard to a signal construction or maintenance job for immediate use on such job, is the exclusive work of signalmen." (Emphasis ours.)

The confronting facts show that the disputed work was not performed on April 14, 1957 as an integral part of the signalmen's repair work. When the

telegraph poles, crossarms and hardware were unloaded on that day, these materials were not thereupon used immediately or at any time on the same day. Work with these materials commenced on the following day and in some instances, it was not used for about a month. The primary purpose of the disputed work was to distribute the materials at points where it would be needed as the permanent repair work of the signalmen progressed. Under these circumstances, we cannot say that the disputed work of distributing and unloading the materials on Sunday, April 14, 1957, was the exclusive work of the signalmen.

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 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 22nd day of May 1963.

LABOR MEMBER'S DISSENT TO AWARD 11431 DOCKET SG-10822

The majority states that:

"The record does not establish that the work in question was the exclusive work of signalmen because such work either 'has been generally recognized as telegraph, telephone or signal work' within the meaning of the Scope Rule or has been historically and traditionally performed by the employees covered by that Rule."

The employees have shown in the record that:

"In 1948 the telegraph and telephone lines were broken by a sleet and ice storm from Schererville, Ind., to Hebron, Ind., and it was necessary at that time for the Carrier to use a work train to unload poles and crossarms and such work was performed exclusively by employees of the C & S Department who were covered by the T & S Agreement.

"Subsequent to the time of this dispute, on Saturday, April 27, 1957, and Sunday, April 28, 1957, Communication and Signal Department employees unloaded telegraph and telephone poles in the vicinity of Kewanna, Ind., located on the South Bend Branch."

Except to allege that the work in question has never been recognized as exclusively that of signalmen, the Carrier has shown no evidence that the work has not been historically and traditionally recognized as that of signalmen and does not in any way deny the truth of the employees' statement.

The majority states that the facts show that the disputed work was not performed as an integral part of the signalmen's repair work. In other words, the majority is saying that, in order to effect the repair work, it was not essential or necessary for the completion of the work to unload the poles and other associated material from the work train. A reasonable question here would seem to be: How else was the material to be placed in service? The majority then admits that the primary purpose of the disputed work was to distribute the material at points where it would be needed as the permanent repair work of the signalmen progressed.

The majority contends that "When the telegraph poles, crossarms and hardware were unloaded on that day, these materials were not thereupon used immediately or at any time on the same day." This statement is made in connection with a quotation from Award 5046 that:

"But work in connection with the movement of such materials from a warehouse or a material yard to a signal construction or maintenance job for immediate use on such job, is the exclusive work of signalmen." (Emphasis ours.)

It is shown in the record that the disputed work was not completed until 6:00 P. M. on that day, that no emergency existed, and that use of the material started immediately after work time for the claimants the next morning. It is also shown that the repair work progressed continuously until its completion approximately a month later. Under a practical application of the quotation from Award 5046, how much more immediate can one get? Since use of the material was started during the regular working hours closest to the time of unloading, certainly the material was for immediate (See Webster's New World Dictionary) use.

The majority has gone far afield to find a way to deny a just and proper claim. Award 11431 is in error; therefore, I dissent.

W. W. Altus