Award No. 11973
Docket No. SG-11416

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on or about April 7, 1958, it assigned and/or permitted employes not covered by the Signalmen's Agreement to perform generally recognized signal work, specifically the work of setting a pole to be used for mounting a meter and weather switch for the purpose of supplying A. C. power for the highway crossing flasher light signals at Highway Crossing No. 33 at Fayette, Mississippi.

(b) The Carrier now be required to compensate Signalman R. D. Stokes at his pro rata rate of pay for the amount of time used by the employes not covered by the Signalmen's Agreement in performing the work cited in part (a) of this claim. [Carrier's file: 135-213-82, Case No. 53 Sig.]

EMPLOYES' STATEMENT OF FACTS: During the first part of 1958, this Carrier's Signal forces installed a set of highway crossing flashing light signals at Highway Crossing No. 33 at Fayette, Mississippi, and in connection with the installation it was necessary that a pole be set for the purpose of mounting a meter and weather switch to supply AC power for the flashing light signals.

The setting of such poles, together with mounting the meter and weather switch with the necessary guys, braces, arms and fixtures, is signal work and has been performed by this Carrier's Signal employes for many years.

Instead of properly assigning to its Signal forces the work in connection with the setting of the pole, the Carrier assigned and/or permitted the

The claim should be dismissed or denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: On April 7, 1958 the Carrier assigned electricians to erect a pole to be used to support a power line from a public utility line, a switch and meter to supply power to the Highway Crossing flasher light signal at Crossing No. 33 at Fayette, Mississippi. The Signalmen erected a service wire from the flasher signal to the switch on the pole. The Claimant contends that the erection of the pole should have been assigned to the signalmen and compensated as such.

The question presented is: Did the Carrier violate the signalmen's agreement by assigning to the electricians the erection of a pole supporting power lines switch, meter and a service line from a Highway Crossing light to the said meter?

"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 Claimant contends that the phrases in the Scope Rule:

". . . highway crossing protection devices and their appurtenances, . . ."

". . . and all other work generally recognized as signal work."

places the work of erecting this pole as a part of the Crossing signal or one of its appurtenances signalmen's work, and the performing of such work by electricians was in violation of the agreement. That the pole was a part of the signal system, the sole purpose of which was to supply electric current necessary to the operation of the Crossing signal and a primary part of and appurtenant to the signal system thus provided for in the Scope Rule.

The Carrier contends that the pole was installed to support service lines, electrical equipment, switch conduit and meter, and thus electricians work specifically according to their current agreement. Moreover, the signalmen's Scope Rule does not specifically list this particular work as belonging to signalmen and if we attempt to imply such work from the specifically enumerated language of the Scope Rule we must consider past practices. Furthermore, the erection of poles, unless primarily used for signal work or the work requiring peculiar skills possessed by signalmen, has never been given to signalmen by past practice on any Carrier.

In order to resolve this matter we must examine the Scope Rule of the current agreement.

The signalmen's Scope Rule accepts jurisdiction over work generally recognized as signal work, Highway Crossing devices and their appurtenances, and all other work generally recognized as signal work. Thus the Claimant recognizes his own lack of jurisdiction by not seeking herein the installation of the equipment on the pole. The signal agreement does not grant to the complainant the right to erect poles exclusively such right is implied if the pole is appurtenant to or generally recognized as signal work. I am of the opinion that the primary purpose of this pole was to support a power line from the main line, meter and switch. Furthermore, the Signalmen had no equipment on the pole with the exception of a service line coming up the pole and connecting with the meter. Appurtenances means that which belongs to something else. Something incident to a principle thing. (Webster's Dictionary.) Thus the pole was incident to the switch and meter rather than the flashing signal.

In addition the complainant has failed to establish any historical pattern, or tradition whereby signalmen have done this work throughout the system. However, the Carrier has presented evidence that such work has not always been done by signalmen. When such work is to be implied from the Scope Rule, which does not exclusively grant the creation of poles to signalmen unless they are primarily for signal purposes, past practice must be shown by clear and concise evidence. The dispute in Birmingham, Alabama referred to in the record recited that the poles carried signal equipment (crossarms etc.) which distinguishes those facts from the dispute at hand. Under the facts and circumstances here I do not consider a power line running up the poles to the switch signal equipment, but general electrical equipment, unless other facts and circumstances are present.

The Signalmen's Scope Rule cannot be implied to include the erection of poles under the facts and circumstances as presented here. No evidence of past practice has been offered by the Claimant. The pole had other uses than for the sole and exclusive use of the signal system. The pole supported the incoming power line, switch and meter which work the Claimant recognized in another craft. The primary use of the power line going from the switch to the signal is part of the signal system. Award No. 3991 of this Division is distinguishable.

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 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 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 December 1963.

LABOR MEMBERS' DISSENT TO AWARD NO. 11973, DOCKET NO. SG-11416

Award 11973 fails to properly interpret and apply the applicable agreement in two major respects.

First, the Award, while recognizing that the subject pole was incidental to the mounting a meter and switch, fails to recognize that the pole, meter, and switch were incidental and appurtenances to the crossing signal, the primary function and purpose for the entire installation.

Secondly, while it is true that no claim was made for the installation of the meter and switch, such oversight on the part of the Claimants should not have prejudiced the proper application of the Scope Rule as it relates to the work claimed.

Award 11973 is in error; therefore, I dissent.

/s/ W. W. Altus
W. W. Altus