Award No. 12374
Docket No. SG-11746

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Galveston, Houston and Henderson Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required and/or permitted machine operators who hold no seniority or other rights under that agreement, to perform signal work of making repairs to signal pole line for 16 hours on December 17, 8 hours on December 18, 16 hours on December 19 and 8 hours on December 22, 1958, and to set pre-cast concrete highway crossing signal foundations at Charles Street for 8 hours on January 14, 1959.

(b) The Carrier should now be required to compensate Signal Maintainer J. T. Harrison, on whose territory the work was performed, for 56 hours at his assigned rate of pay for those dates.

EMPLOYES' STATEMENT OF FACTS: Under date of July 29, 1938, the parties to this dispute entered into a Memorandum of Agreement that provided the Signalmen's Agreement on the Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; and Panhandle and Santa Fe Railway Company would be accepted as applying on this Carrier, with certain exceptions contained in that Memorandum, and that future revisions would be accepted as applying with equal force, except that modifications of excluded rules would not apply.

Under dates of December 17, 18, 19 and 22, 1958, Mr. J. T. Harrison, Signal Maintainer, presented time claims in the amounts of 16, 8, 16 and 8 hours, respectively, on the basis the Carrier required and/or permitted Machine Operators, who hold no seniority or other rights under the Signalmen's Agreement, to perform signal work in connection with raising signal line wires over a bayou. Under date of **January 5, 1959, Mr. W. E. Westrup, Superintendent,** wrote the following letter of denial to **Signal Maintainer Harrison:**

"Referring to the following claims filed by you on the dates mentioned:

3. The long established and recognized practice under the Agreement on this property, as indicated in Carrier's Exhibit C, refutes and denies the interpretation of the Agreement contended for here by the Petitioner, and definitely supports the Carrier's position.

4. There is no basis for an affirmative award.

All data submitted in support of the Carrier's position have been heretofore submitted to the Employes or their duly accredited representatives.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in Employes' and Organization's submission and pleadings.

Except as herein expressly admitted, the Galveston, Houston and Henderson Railroad Company denies each and every, all and singular, the allegations of the Organization and Employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Galveston, Houston and Henderson Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 29, 1938, Carrier and Petitioner entered into a Memorandum of Agreement wherein it was agreed that, with certain specified exceptions, the Agreement between Petitioner and The Atchison, Topeka and Santa Fe Railway Company, et al, was accepted as applying to this Carrier. The Scope Rule of that Agreement which is applicable to this Carrier reads as follows:

> "This Agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, centralized traffic control, automatic highway crossing protective devices, including all their appurtenances and applicances, or perform any other work generally recognized as signal work.
>
> The classifications as enumerated in Article I include all the employes of the Signal Department performing the work referred to under the heading of 'Scope'."

Article I lists the job classifications and describes the work of each.

On December 17, 18, 19 and 22, 1958, and again on January 14, 1959, Machine Operators, who are not covered under the Signalmens' Agreement, assisted Signalmen in raising signal line wires over a bayou and with setting precast foundation for a highway crossing protective device.

The record conclusively establishes the fact that the work performed by the Machine Operators was signal work. On January 5, 1959, Carrier's Superintendent wrote to Claimant, in part, as follows:

"Information at hand indicates that these men assisted you in taking care of the work performed by them and inasmuch as you lost no time and there were no furloughed signal department employes available, your claims are respectively declined."

Again on January 28, 1959, Carrier's Superintendent wrote to Claimant, in part, as follows:

"The machine operator assisted you in signal work due to there being no furloughed signal employes. Therefore, we see no merit to the claim and it is respectfully declined."

There is no merit to Carrier's allegation that the Scope Rule of the Agreement does not "specifically describe or define 'work generally recognized as signal work'." On the contrary, the Scope Rule and Article I define and describe the work of each classification covered by the Agreement. For example, Section 8 of Article I states:

"Section 8.—Signal Helper: A man assigned to perform work generally recognized as helper's work and to assist signalmen, assistant signalmen, signal maintainers or assistant signal maintainers, shall be classified as a signal helper."

The Machine Operators assisted the signal employes on the dates set out in the claim, and as such were performing the work of Signal Helpers as described in Section 8 of Article I. This work under the Scope Rule and Article I belongs exclusively to Signalmen. Carrier clearly violated the Agreement.

Carrier urges that the claim is for a penalty because Claimant actually worked on each of the days for which the claim is filed; that he received eight (8) hours of pay at his rate for each of the days; that he could not have been available for the work done on those days by the Machine Operators; that the Agreement does not provide for payment of services not performed; that this Division has no right to assess a penalty.

A collective bargaining agreement is a joint undertaking of the parties with duties and responsibilities mutually assumed. Where one of the parties violates that Agreement a remedy necessarily must follow. To find that Carrier violated the Agreement and assess no penalty for that violation is an invitation to the Carrier to continue to refuse to observe its obligations. If Carrier's position is sustained it could continue to violate the Scope Rule and Article I of the Agreement with impunity as long as no signal employes were on furlough and all of them were actually at work. For economic or other reasons, Carrier could keep the Signalmen work force at a minimum and use employes not covered by the Signalmens' Agreement to perform signal work. No actual damages could ever be proved. This is not the intent of the parties nor the purpose of the Agreement.

While Carrier alone has the right to determine the size of the work force in any craft, it has a duty and obligation to keep available an adequate number of employes so that the terms of the Agreement are not breached. Carrier is obligated to have a sufficient number of available signalmen on its roster for its needs. If it fails to do so, it may not complain when a penalty is assessed for a contract violation.

The claim is for 56 hours pay at Claimant's rate as a Signal Maintainer. It is clear that the Machine Operators assisted the Signal Maintainer and as

such performed the work of a Signal Helper and not as a Signal Maintainer. Claimant is entitled to compensation for fifty-six (56) hours at the Signal Helper's pro rata rate.

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 Carrier violated the Agreement.

AWARD

Claim (a) is sustained and Claim (b) is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.