Award No. 12653
Docket No. SG-13289

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

(a) That the Carrier violated the Signalmen's Agreement on February 25, 1961, when it assigned employes other than those covered by the Signalmen's Agreement to remove ice and snow from switches, switch rods, and switch machines at "WR" Interlocking. This work in the past has been performed by signal forces.

(b) That Signal Maintainer W. T. Weinley be compensated for two and two-thirds (2⅔) hours at the overtime rate of pay account of this violation. [Carrier's File: 155.1-4; Signal Item 93]

EMPLOYES' STATEMENT OF FACTS: On the date involved in this claim, the Claimant was the incumbent of a signal maintenance position on that part of the Erie-Lackawanna Railroad Company that was formerly the Erie Railroad Company, and he was governed by the Agreement between the Erie Railroad Company and Trustee of the property of the New Jersey and New York Railroad Company, and Signal Department employes represented by this Brotherhood, reprint effective March 1, 1953. By reference thereto, that Agreement is made a part of the record in this dispute.

This dispute arose as a result of the Carrier using track forces to remove snow and ice from "WR" interlocking plant on February 25, 1961. The work of removing snow and ice from the vicinity of electric switch machines, pipe lines and power operated switch points and associated operating rods have long been recognized as signal work on this Carrier. Signal forces performed this work until 1955 when the Carrier reached an agreement with the track forces that they would clean snow and ice from switches. However, signal forces, as the record shows, continued to clean ice and snow from pipe lines and switch machines.

The record also shows that Signal Maintainers are required to order the oil used for melting snow and are held responsible for the amount of

AWARD 8676, CRI&P-FWD v. DC — Referee Vokoun

"The rule is well established that the Board is required to take the agreement as it is written and cannot rewrite it by interpretation nor by interpretation put in that which the parties have left out."

IV. CONCLUSION

Carrier has heretofore shown that there can be no dispute concerning the fact that the parties' agreement does not cover an exclusive right to the work here claimed. Thus, the sole issue in dispute is: do signal department employes have by way of past practice and custom on the property an exclusive right to the work of cleaning snow and ice from switches? Awards 507, 1257, 1397, 2436, 3338, 4349, 5167 and 5564.

Consistent therewith, Carrier has then shown that this work very definitely falls in the category of "no man's land" (Awards 7784, 8381, 9047) and that the answer to whether signal department employes have exclusive right to this work by way of past practice and custom is an emphatic — no. It has been shown to be an absolute fact, substantiated by authoritative proof, that an exclusive right to this work simply does not exist for Petitioner. Signalmen simply do not have an exclusive right to remove snow and ice from switches and interlocking plants no matter what means is employed and the use of snow melting oil by maintenance of way employes in the instant dispute creates no criteria or authoritative basis for this claim.

Carrier reiterates that Petitioner by this claim is trying to write into the agreement a condition that it has never heretofore enjoyed. Under the weight of the authorities previously cited (Awards 8358, 8564, 8676) this claim must fail on this count alone.

Based upon the fact and authorities cited, Carrier submits that this claim is totally without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the same parties and principles as Docket SG-12579, Award Number 12652. This claim is, therefore, also denied.

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 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 19th day of June 1964.