

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) That the Company violated the Signalmen's Agreement when it arranged scope work to persons who hold no seniority rights and who are not covered by our agreement.

(b) That fifty (50) wooden switch heater boxes were constructed by members of the carpenters department. These boxes have been constructed by members of our department whenever they were needed for snow heaters.

(c) That two (2) days' pay at the punitive rate be paid the following claimants: Arthur Muller, Asst. Foreman, C. A. Malley, John Thunquist, A. J. Callahan, John Venner, and A. J. Towne, Signalmen. [Docket No. 104—New York Region Case No. 28/59.]

EMPLOYEES' STATEMENT OF FACTS: As shown by the Statement of Claim, this dispute involves fifty (50) wooden switch heater boxes which were constructed by employees who hold no seniority or other rights under the Signalmen's Agreement. These boxes are used in connection with heaters installed to melt ice and snow from power operated switches on the New York Region.

Attached hereto and identified as Brotherhood's Exhibit No. 1 are photographs of two of the boxes in question. The boxes shown are located at Switch 167, "A" Tower, "A" Yard, Pennsylvania Station, New York City. One photograph shows the boxes open and the other shows them closed. These boxes were constructed by the Carrier's carpenters, who hold no seniority or other rights under the Signalmen's Agreement.

On November 10, 1958, Mr. Raymond F. Love, Local Chairman, presented the following claim to Mr. D. K. Aiken, Supervisor T&S:

upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the work involved in this dispute was not work reserved exclusively for C. & S. Department employes by virtue of the Scope Rule of the Signalmen's Agreement or otherwise; and that the performance of such work by the M. of W. employes was not in violation of said Agreement. Therefore, no proper basis for the claim exists, and your Honorable Board is respectfully requested to deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the construction of 50 wooden switch heater boxes used in connection with heaters installed to melt ice and snow from power operated switches.

Organization claims that this work was improperly assigned to employes who hold no seniority or other rights under the Signalmen's Agreement. It contends that Claimants have performed work of constructing switch heater boxes for many years and that such work is covered by the Scope of the Signalmen's Agreement.

In its denial of the claim Carrier takes the position that construction work is not covered by the Scope Rule and there was no breach of the rule in utilizing carpenters. Moreover, it submits that there is no consistent pattern of past practice in which signalmen performed the work in question.

We find that the Scope Rule does not give to signalmen the exclusive right to perform construction work; in fact, it omits the word construction and specifically mentions, "installation and maintenance". Carrier, therefore, was within its right when it contracted out for the construction of the switch heaters and assigned the installation of this equipment to the signalmen. The box covering is part of the construction related to the switch heaters. It is not construction work merely incidental to the installation. Just as the switch heaters were constructed out, it was also proper to assign this covering construction work to carpenters outside of the Agreement.

The record discloses lack of uniformity in the practice in effect on the property. A survey by Carrier conducted in another case in the New York Region, the origin of this dispute, revealed that both Maintenance of Way and signalmen employes performed this type of work and more frequently it was assigned to Maintenance of Way employes. We do not find sufficient evidence to support the contention that by past practice, custom, and tradition the construction of protective covers belongs to signalmen.

Since both signalmen and Maintenance of Way employes engaged in this type of construction work and since the Agreement does not grant the exclusive right to perform this work to signalmen, we conclude that Carrier may assign it to either craft. The Agreement was not violated.

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

The Agreement of the parties 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.