

Award No. 13029

Docket No. SG-12287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ALTON AND SOUTHERN RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern Railroad that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required a Maintenance of Way employe, who holds no seniority or other rights under the Signalmen's Agreement, to perform generally recognized signal work of oiling signal equipment (pipe-connected derrails) on August 14, 21, September 4, 11, 18, 25, and October 2, 1959.

(b) The Carrier should now be required to compensate Mr. Leland C. Goldschmidt for two hours and forty minutes at the Assistant Signalman rate of pay (\$2.44 per hour) for each day listed in paragraph (a) above.

EMPLOYEES' STATEMENT OF FACTS: As shown by the Statement of Claim, this dispute involves a Maintenance of Way employe oiling pipe-connected derrails. A derail is a safety device applied to a track for the purpose of reflecting railway rolling stock from the rails at a chosen point in order to prevent collisions or other accidents. A pipe-connected derail is one that is connected to the switch by a pipe line so that when a switchman or other employe throws the switch, the derail will move at the same time.

According to our records, the Carrier's signal employes installed the first pipe-connected derail in September, 1951. Since that time they have installed other derrails of this type and have maintained, adjusted, repaired, cleaned, and oiled them. In signaled territory, this equipment must be kept in proper adjustment and repair or the signal system will be adversely affected.

The claimant in this dispute, Mr. Leland C. Goldschmidt, is a top rate Assistant Signalman working with the assigned Signal Maintainer patrolling and maintaining telephone, electrical, and signal apparatus and their appurtenances on the Alton and Southern Railroad. Prior to the time this dispute arose, the oiling of pipe-connected derail installations was usually

Foreman Embrey, and Maintenance of Way Track Walker Cunningham, offered as proof that the work of oiling the pipe-connected derails has always been performed by employees of both the Signal and Maintenance of Way Departments, and that the furnishing of an oil can and better grade oil to the track walker was merely an improvement in the oiling of the derail systems.

Item 4 of Local Chairman Goldschmidt's letter, dated December 1, 1959, states: "The farming out of this work was not arbitrarily discussed as provided for under the National Railway Act." A discussion of this matter was not necessary because, as this Carrier has conclusively shown, there was no "farming out of work" involved.

In summary, we have shown that:

1. This disputed work has never been the exclusive work of Signal Department employees,
2. the work has always been performed by both the employees of the Signal and Maintenance of Way Departments, and
3. it is not, on this Carrier or on other carriers in the area, work that is generally recognized as signalmen's work, and, therefore, not covered by the Scope rule of the Signalmen's Agreement.

We respectfully request your Board to decline these claims.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of Claimant Leland C. Goldschmidt, an Assistant Signalman, that prior to the time this dispute arose, the oiling of pipe-connected derail installations was usually performed by Claimant, as the oiling of these derails had been done by other signal employees on periodic maintenance checks; that sometime in April, on April 21, 1959, precisely, a Maintenance of Way track walker began oiling the derails in question, and a claim was presented.

The claim was denied by the Signal Supervisor, who asserted that the work of oiling derails had for many years been performed by both employees of the Maintenance of Way Department and the Signal Department and that this work was not exclusively reserved by agreement or practice to either craft.

The Scope Rule of the Agreement provides, in part, as follows:

"This agreement covers rates of pay and working conditions of all employees in the Signal Department below the rank of Signal Supervisor, except clerical forces, performing work generally recognized as signal work."

In Carrier's Submission we find this statement:

"The work of installing the pipeline-connected derail systems was performed by the Signal Department employees, and the work of adjusting and repairing the systems has been performed by these employees exclusively since the installations were completed."

Claimant urges, quite logically, that if it is signal work to install, adjust and repair these derail systems, it is also signal work to oil them, and that the work of a class is made up of many small items of work.

Carrier maintains that the oiling of these systems is not skilled labor, and, as Carrier has indicated, was not exclusively reserved by agreement or practice to either craft.

In a letter of October 13, 1959, addressed by the Assistant General Manager to the Local Chairman, we find this statement:

"... we have made inquiry of several railroads as to who oils and cleans pipeline derails and find that there is no uniformity among the railroads we talked to in the assignment of this work. On some roads the section men take care of oiling and cleaning the pipeline derails; on others, the Signal Department handles this work, and on still others, the work is performed by both crafts. We cannot, therefore, say that this work is 'generally recognized as signal work'."

On January 28, 1960, in a letter between the same parties constituting a final declination of the claims, we note the following:

"The work of oiling pipeline-connected derails is not generally recognized throughout the railroad industry as Signal Department work. It is not the exclusive work of either the Signal Department or the Maintenance of Way Department, and may be performed by either department or by both. Consequently, your claims are declined."

It would appear from this statement and the preceding one that there are different practices on different railroad systems as to whom this work belongs. Therefore, this instant dispute must be resolved by what has happened on this property.

This Board has held many times that work reserved to the employees is that which has been traditionally and customarily performed by them. The Organization has the burden of proving that such employees have exclusively performed such work.

If we simply had here a mere assertion by the Claimant that this work in the past had been performed exclusively by Signal Department workers and nothing more, and a denial by the Carrier of such a practice, we would necessarily have to resolve this dispute in favor of the Carrier. However, in this record, we have something beyond a mere assertion that this work was customarily and traditionally performed exclusively by Signal Department employees.

On December 1, 1959, three Signalmen, employees of the Carrier, prepared positive statement of fact, in writing, that they had installed pipeline-connected derail assemblies and that they had subsequently "oiled pipeline-connected derails on periodic maintenance checks" or "consistently and periodically cleaned and oiled pipe line connected derails" and each of them stated that he had "never observed or had knowledge of any Maintenance Forces performing this work until a recent arrangement in April of this year permitting them to do so." These three letters, Exhibit 1 in Claimant's Submission, were presented to the Carrier on December 1, 1959, and were not subsequently controverted by the Carrier on the property.

Though in their statements these Signalmen did not use the exact words that the oiling of pipeline-connected derails had been exclusively reserved to Signal Department employes on this property, such statements did contain sufficient adequate factual data to properly form the basis for a finding that this had in fact been the practice on this property.

These letters were presented to the Carrier on December 1, 1959, but were not controverted on the property. It is significant that in the final letter of declination on January 28, 1960, a portion of which has been heretofore cited, such declination was based on the proposition "that this work is not generally recognized throughout the industry as Signal Department work."

It was not until after October 26, 1960, when Claimant had served a notice of submission to this Board on Carrier, that the Carrier on November 21, 1960, prepared statements controverting those offered by the Claimant on the property on December 1, 1959, while the claim was being progressed.

These statements cited by Carrier and attached to its submissions have been disregarded by this Board, as it appears that they were not first presented or known to the Petitioner on the property, this being in accord with our rule of procedure outlined in Board Circular No. 1, the objection of the Claimant having been timely made. See Award 8068, Beatty; Award 10985, Hall.

For the foregoing reasons, we must conclude that Claimant has established by the burden of proof as required by this Board that the work involved belonged exclusively to the Signal Department on this property.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.