

Award No. 13056
Docket No. SG-12443

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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 that:

(a) The Company violated the Agreement between October 6, 1958, and December 5, 1958, when they allowed the Norfolk and Western Signal and Line Gangs to install two manual switching signals located approximately 300 feet east and 300 feet west of Blair Avenue C. L. & N. Lebanon Branch P. R. R. along with controllers, line wires, underground cables, and aerial cables.

(b) Each of the five following furloughed Signalmen, namely, H. L. Stichtenoth, W. E. Hendricks, Wayne Collins, Q. L. Zachary, and J. C. Kurtz, be paid a total of 39.5 hours at Signalmen's rate and that G. A. Johnson, reduced Foreman, be paid 39.5 hours at Foreman's rate for the above violation [System Docket 125 - Buckeye Region Case No. Z-42]

EMPLOYEES' STATEMENT OF FACTS: Between October 6, 1958, and December 5, 1958, Norfolk and Western Railway Company employees installed two (2) switching signals on this Carrier's right of way to provide safe interchange of cars between these two railroads. One signal is located approximately three hundred (300) feet east and the other approximately three hundred (300) feet west of Blair Avenue, C. L. & N. Lebanon Branch of this Carrier. They worked four (4) hours unloading material on October 6, 1958, and a total of two hundred and twenty-five (225) hours installing the signals and appurtenances from October 20, until November 19, 1958, and eight hours cutting the signals into service on December 5, 1958. Both railroads use these signals.

Under date of December 15, 1958, Mr. Willis Abner, Local Chairman, presented the following claim to Mr. G. F. Laser, Supervisor of C & S:

"I am presenting the following claim on behalf of the furloughed men on the Cincinnati Division.

(a) Claim that the Company violated the Agreement between October 6, 1958 and December 5, 1958, when they

CONCLUSION

The Carrier has shown that the work here complained of is work specifically covered by paragraph (a) of the Exceptions to the Scope Rule, and, therefore, its performance by the Norfolk and Western Railway Signal Department employees could not possibly have resulted in any violation of the applicable Rules Agreement. Your Honorable Board is respectfully requested to deny the claim of the Employees in this matter.

OPINION OF BOARD: Between October 6 and December 5, 1958, employees of the Signal Department of the Norfolk and Western Railway Company installed two manually operating switching signals at a location approximately 300 feet west of the Pennsylvania Railroad Blair Avenue highway crossing on the CL&N Lenanon Branch. These signals were placed on small parcels of land leased to the Norfolk and Western Railway Company. Although power for these signals is furnished by the Pennsylvania Railroad, the signals are maintained by employees of the Norfolk and Western Railway Company. One control box is on property owned by the Norfolk and Western Railway Company, and the other control box is placed on property owned by the Pennsylvania Railroad, but leased to the Norfolk and Western Railway Company.

The Brotherhood contends that the work involved in the claim was signal work and under the Scope of the Agreement, should have been performed by the five furloughed Signalmen named in the claim, employees of the Pennsylvania Railroad T&S Department. It argues that the lease upon which Carrier relies to support its position that it had no control over the property has no validity, since it is dated five months after the claim was initiated. It further asserts that in view of the fact that the Pennsylvania Railroad Company furnished the power, and that the signals were installed on Pennsylvania Railroad property and used by both railroads, they should have been installed by employees of the Pennsylvania Railroad Company T&S Department.

There is no question as to the nature of the work in this dispute. It is clearly signal work which accrues to that class of employees. The issue, however, is whether the work was properly assigned to Norfolk and Western Railway Company employees, or whether it should have been performed by Pennsylvania Railroad employees. In short, we must determine whether the work involved was subject to the Agreement between the Pennsylvania Railroad Company and the Brotherhood of Railroad Signalmen.

The Scope Rule has no application to the situation in the instant case because the Norfolk and Western Railway Company owns the signal equipment and maintains it by its own Signal Department employees. Moreover, the signals are located on land belonging to or leased to it by the Pennsylvania Railroad Company. With respect to the allegation that Carrier produced no satisfactory evidence to show that the land had been leased to the Norfolk and Western Railway Company, we find that there was a verbal agreement and understanding prior to the performance of the work in question which culminated in the written lease dated May 19, 1959. We are satisfied, therefore, that the land was leased to the Norfolk and Western Railway Company. The Scope Rule cannot extend to work that does not belong to Carrier; it applies only to that work Carrier has the power to offer. The fact that the Pennsylvania Railroad jointly used the facilities does not bring these and the employees who installed and operated them under the Scope Rule.

Paragraph (a) to the Exceptions to the Scope Rule provides that the Agreement shall not be construed as granting to employes coming within its Scope the exclusive right to perform the work of installing or maintaining other than railroad-owned facilities located on the property. Thus, even if we did not recognize the lease arrangement, the Exception would permit the Norfolk and Western Railway Company to use its own employes to install its own equipment. We, therefore, hold that the Agreement was not violated and the claims are without merit.

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

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 13th day of November 1964.