Award No. 13099
Docket No. SG-12143

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Air Line Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement when it arranged and did have persons who hold no seniority or other rights under that agreement to perform recognized signal work in connection with CTC installation at or near Richmond, Virginia, beginning on or about March 1, 1959, when such persons dug holes and arranged for signal foundations, built forms for such foundations, set forms and poured concrete for the signal foundations.

(b) Signal Foremen, Messrs. J. W. Powers, and H. L. McCrimmon, together with the signal employes assigned to and/or working in the respective gangs, and successors, be compensated at their respective overtime rates of pay on a proportionate basis for all man-hours of service performed by the employes or other persons not covered and who held no seniority or other rights under the Signalmen's Agreement. Claim to begin sixty (60) days prior to May 4, 1959, or dates the signal work was performed if within the time limits, and continue thereafter so long as the violation was permitted to exist and signal work was performed by persons not covered by the Signalmen's Agreement.

(c) Carrier furnish records and/or information on the number of man-hours that were worked by persons other than signal employes, in performing signal work, at or near Richmond, Virginia, as indicated in this claim, in order that a proper settlement can be made satisfactory to those involved, if claim is sustained in whole or in part. [Carrier's File: Sig. 22.]

EMPLOYES' STATEMENT OF FACTS: During the time involved in this dispute, the Carrier had two signal gangs performing signal construction work between Mile Posts 0.1 and 5.0 at Richmond, Virginia. The claimants in this dispute are the employes of these two signal gangs.

Beginning on or about February 1, 1959, the Carrier assigned a bridge gang, under the direction of Foreman M. E. Whitimore, to construct concrete

quickly as possible and that the responsibility for making the track structure safe for train operations rested on the Engineering Department and not the Signal Department. For instance, the General Chairman claimed signal forces should have dug the holes for the foundation and to follow that theory would have meant that after Maintenance of Way forces and equipment completed the grading, excavating, driving of piles and shoring up the track, they should have restored the dirt, ballast, etc., that was excavated and then allowed the signal forces to dig it out again. This would have been ridiculous, to say the least. Also, since the foundations involved the track structure as well as support for the signal bridges, it was not possible to satisfactorily proportion the construction thereof between the two crafts.

As to the foundation for double signal just north of Hermitage Road, this too was not an ordinary case of digging a hole on the right-of-way and pouring some concrete for foundation for signals. As shown by the record, the required location was directly on top of City sewer line, requiring construction permit from the City and including a specially designed concrete pad over the sewer line, steel reinforced, in order to afford proper protection to the sewer line and the track structure. This was properly the responsibility of the Chief Engineer and accordingly Maintenance of Way forces and equipment were used. There was no way to satisfactorily divide up this work and use both crafts to perform it.

All of the signal employes (claimants) were regularly employed on essential work in connection with the CTC signal project during the period the Maintenance of Way employes performed the work referred to, and were not available therefore. While the General Chairman alleged there was no reason or justification for signal employes not being used, he admitted that it was proper for some of the work referred to, to be performed by Maintenance of Way forces. He never became specific in what portion of the work he was claiming nor could he explain how it would have been practical to divide the work between Signal forces and Maintenance of Way forces. All he was interested in was collecting some kind of penalty or extra payment at overtime rate) for all members of two signal gangs who were working full time, Carrier to develop and furnish data so he could decide what would be "a proper settlement" and "satisfactory to those involved."

OPINION OF BOARD: It is the contention of the Petitioner that near Richmond, Virginia, on or about February 1, 1959, the Carrier assigned a bridge gang, under the direction of a foreman to construct concrete signal foundations at Mile Posts 0.7, 03.4 and 03.5; that they dug holes and arranged for signal foundations, built forms for such foundations, set forms and poured concrete for signal foundations; that this work under the scope of the agreement belonged exclusively to Signalmen, that this was recognized work in connection with CTC installation and the bridge gang who performed the work held no seniority or other rights under the Signalmen's Agreement.

It is the position of the Carrier that in order to provide safe and efficient operation, it was necessary for Carrier to construct connecting tracks, rearrange trackage and extend the CTC signal system; that this necessitated the location of cantilever bridges, with proper foundations and supports over several tracks; that appropriate structural steel bridges were designed by the Chief Engineer; built to specifications and moved to erection sites, and were erected and installation completed, with signals, by Carrier's signal forces.

It is further contended by Carrier that special foundations were also designed by the Chief Engineer to support the signal bridges; that because of the necessity of building the foundations so close to the tracks, the weight of the signal bridges and the condition of the soil, it was necessary that piles be driven to support the foundation; that it was, also, necessary that the shoulder of the track be shored up to be safe for the operation of trains while the work was in progress; that because of the stress and weight of the foundation it was necessary that they be steel reinforced; that all of the work including grading, excavating, backfilling and pouring concrete was properly the work of the Maintenance of Way forces.

Carrier further contends that it was necessary to put up a double signal foundation directly on top of the city sewer line and that a special steel reinforced pad over the sewer line was provided to protect the sewer line and track structure; that during the time all of this work was being done, all signal forces were working. The Carrier urges that though the Scope Rule of the Agreement spells out certain work it does not mention signal foundations of any kind and that the burden is on Petitioner to prove that this work belongs exclusively to the Signal forces.

During the progress of the claim on the property, the General Chairman made the following statement:

> "We are not here, nor have we contended that driving of piles by a pile driver is generally recognized signal work. Neither are we contending that the cribbing under the track to support the track for the safe operation of trains while other work was in progress, is signal work. However, there was recognized signal work in the setting of forms and construction of the signal foundations which should have been done by signal employes in lieu of other forces."

Carrier contends:

> "The Carrier contends (R., P. 24) that there was no way to divide the work, using both Maintenance of Way and signal forces, bearing in mind the necessity to complete the work as quickly as possible, and that since the foundations involved the track structure as well as support for the signal bridges, it was simply not possible to satisfactorily proportion the construction of the foundations between the two crafts."

The Management has the primary responsibility for making work assignments and it must consider what is best for the efficient operation of its business. Manifestly a determination as to whether work comes within the scope of the agreement must be resolved from a consideration of the work as a whole, and not by breaking it down into all of its component parts.

In Award 6214 — Wenke, a sustaining award, we note the following:

> "It may be that under certain situations where, . . . the care and maintenance of the tracks becomes of major concern that Carrier may properly use trackmen to perform the work."

In support of Carrier's position see, also, Awards 9036 — Murphy, 9335 — Weston and 11838 — Engelstein.

In support of Petitioner's position Award 5476 — Carter has been cited. What has been overlooked is that in Award 5476 there was a specific agree-

ment concerning signal foundations and signal bridge construction and maintenance. That is lacking here, there is no mention of a signal foundation of any kind in the Scope Rule involved.

Under the facts and circumstances of this case we must find that Petitioner is not entitled to a sustaining award.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1964.

DISSENT TO AWARD 13099,
DOCKET SG-12143

The Majority found that:

"* * * Manifestly a determination as to whether work comes within the scope of the agreement must be resolved from a consideration of the work as a whole, and not by breaking it down into all of its component parts."

Which is just so much double talk for the reason that had that principle been applied to the facts in Docket SG-12143, as it indubitably should have been, the Claim would have been sustained.

Having wilfully misapplied a so well established principle, it is not surprising that the Majority failed to see the cited Awards in proper perspective.

/s/ G. Orndorff
Labor Member