Award No. 13182
Docket No. SG-13135

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958, including revisions), particularly the Scope Rule and Rule 70.

(b) Mr. J. E. Whitlock, Jr., and Mr. H. W. Feathers be paid sixteen (16) hours at their straight time rate of pay, which was the time required by employes not covered by the Signalmen's Agreement to weld stainless steel bead on the rails of crossover and Steiner Lumber Spur at Walerga, California, near Mile Post 99, on or about November 16 and 17, 1960.
[Carrier's File: SIG 152-85, S-97-17-102]

EMPLOYES' STATEMENT OF FACTS: On or about November 16 and 17, 1960, the Carrier assigned and/or permitted employes not covered by the Signalmen's Agreement to weld a stainless steel bead on the rails of the crossover and Steiner Lumber Spur at Walerga, California, near Mile Post 99. As the only reason for this stainless steel bead is to increase the shunting sensitivity of the track circuit, the Brotherhood's Local Chairman presented a claim on behalf of Messrs. J. E. Whitlock, Jr and H. W. Feathers, the senior Signalmen in Signal Gang No. 8, for sixteen hours' pay at their straight time rate of pay. The Local Chairman's original claim of December 30, 1960, to the Signal Supervisor is attached hereto and identified as Brotherhood's Exhibit No. 1. The Signal Supervisor's denial of January 6, 1961, is Brotherhood's Exhibit No. 2.

On January 16, 1961, the Local Chairman advised the Signal Supervisor of the rejection of his decision; then, appealed that decision to the Carrier's Superintendent on the same day. The Superintendent's denial of February 2, 1961, is Brotherhood's Exhibit No. 3.

tioner on the property. Although this practice was followed prior to the adoption of the current agreement, and has been generally followed since the adoption of said agreement, no complaint or claim was previously made by petitioner.

The following portion of this Division's Award No. 8538 clearly states the principles of contract law which carrier considers controlling in this case.

AWARD 8538

> "When a collective bargaining agreement is consummated and existing practices are not abrogated or changed by its terms, those existing practices are just as valid and enforceable as if authorized by the agreement itself (Awards 1257, 1568, 3461, 4104); and particularly when, as here, an existing practice is sought to be changed.
>
> Claimants here have not conclusively established their right to perform the work in question to the exclusion of others similarly employed, either through custom and practice on this property, or under the terms of the contract. Thus, in effect, this Board is being asked to grant something the agreement does not provide. The rule that we are without authority so to do is too well established to require further comment.
>
> In view of the foregoing, there is no basis for a sustaining award, and the claim must be denied."

Since the Scope Rule does not confer upon claimants an exclusive right to the work involved, there was no violation of the current agreement, and claimants are entitled to no payment under Rule 70.

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises by reason of Carrier's assigning work of welding a stainless steel strip, or bead, on the rails at various road crossings to Maintenance of Way personnel. The Brotherhood of Railroad Signalmen argue that such work belongs to Signalmen under a Scope Rule which includes the phrase "and all other work that is generally recognized as signal work."

We have considered this issue under a similar fact situation in Award 13181. Therein we denied the claim, holding that the work involved had been traditionally performed by other than Signalmen. The holding in that case is clearly applicable to this case, and the reasoning in that case is hereby adopted in this opinion.

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

That 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 18th day of December 1964.