

Award No. 13753
Docket No. SG-13460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

(a) That the Carrier violated the Signalmen's Agreement when it permitted two (2) meters to be repaired by employes outside the Signal Repair Shop.

(b) That the Carrier compensate L. A. French for two minimum calls of two hours and forty minutes each account of the violation outlined in paragraph (a). [Carrier's File: G-304-20; G-304]

EMPLOYES' STATEMENT OF FACTS: Prior to the time this dispute arose, it had always been the practice on this Carrier to send meters to the Signal Repair Shop for repairs. There is an Agreement between the parties that it will be the general practice to have all signal repair work possible performed in the shop, except in emergencies, the winding of armatures or such work which may come up from time to time and which the Carrier is not equipped to perform.

During the latter part of December 1960, approximately, the Carrier permitted two meters to be repaired in the field instead of being sent to the Signal Repair Shop. The meters were later sent to the shop where it was determined that they had been repaired, outside the Signal Shop. The two meters in question arrived at the shop during the early part of January, 1961. The Signal Repair Shop constitutes a distinct and separate seniority district on this Carrier. The Carrier is equipped to repair meters in the Signal Repair Shop and such work has been performed there for many, many years.

As a result of the two violations referred to above, Local Chairman L. A. French filed a claim on behalf of himself with Superintendent P. P. Ash. The claim, dated January 5, 1961, is attached hereto as Brotherhood's Exhibit No. 1.

Mr. Ash denied the claim in a letter to Local Chairman French dated January 18, 1961. This letter of denial is Brotherhood's Exhibit No. 2.

The employees contention regarding the alleged understanding had during the 1949 agreement revision is denied, however, by carrier's representatives who were present during the 1949 revision of the agreement as heretofore shown by carrier. See Mr. Ash's letters heretofore quoted.

Furthermore, as stated by Mr. Ash in his letter of August 3, 1961, at the time of the 1949 revision of the agreement, it was not the practice for all meter repair work to be performed in the signal repair shop and it never has been the practice to consider that the work of repairs is reserved exclusively to the signal shop group of employees.

Nor has it been the practice for all meter repairs to be restricted to the signal shop employees subsequent to the 1949 revision of the agreement. Some line-of-road maintainers have made minor repairs to the type of meter here involved, such as repairing broken binding post, replacing broken glass, repairing selector switch, and straighten pointer.

It is obvious the employees are here endeavoring to obtain by administrative fiat a restriction on repair work to confine same to the performance by employees assigned in the signal repair shop district.

Carrier submits there is no provision in the signal employees' agreement which supports the employees' claim that there was no understanding or commitment made at the time of the 1949 revision of the agreement that repair work involving meters would only be done by employees in the signal repair shop district. The practice both prior and subsequent to the 1949 revision of the agreement does not support the employees' contention.

In Third Division Award 6270 and others, it has been held that "An employer retains, subject to the limitations of the collective bargaining agreement, all those functions generally considered and accepted as inherent prerogatives of Management. These ordinarily include distribution of the work load and direction of the working force."

This Board has also held in numerous awards that the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance. Carrier submits the employees have failed to make their case for which reason the claim should be denied.

OPINION OF BOARD: The Organization contends that the Carrier violated the Signalmen's Agreement when it permitted two (2) meters to be repaired by employees outside the Signal Repair Shop; that Rule 32 of the Agreement outlines specific seniority districts and employees holding seniority in the Signal Repair Shop are entitled to perform all work that accrues to the Shop by the Agreement and custom; and that a Letter of Agreement signed April 10, 1936, by both parties, is still a part of the current Signalmen's Agreement, granting the Signal Repair Shop exclusive right to perform all repair work on meters.

Carrier maintains that it is not the practice or custom for all meter repair work to be performed in the Signal Repair Shop and it has not been the practice to reserve meter repair work exclusively to the Signal Shop employees; that the April 10, 1936 Letter Agreement refers only to signal work being contracted out to outside parties—parties not covered by the Signalmen's Agreement; and line-of-road signal maintainers or signalmen, have by general practice, been permitted to make minor or limited repairs to meters.

The dispute involves a claim of one seniority district (signal repair shop district) on account employees covered by the same agreement, but assigned to another seniority district, performing the repair work.

The issue to be resolved is whether the Signal Repair Shop has the exclusive right to do all meter repair work on the property?

Letter of Agreement dated April 10, 1936, introduced in the ex parte submissions of both parties, does not list meters as an item excepted from the equipment to be repaired, or are they so named. The letter in part reads:

" . . . and it will be the general practice otherwise to have all signal repair work possible done in our shop, except in emergencies the winding of armatures, or such other work as may come up from time to time and which we are not equipped to perform. . . ."
(Emphasis ours.)

We find from the record, that the "general practice", on various points of the property, has been for line-of-road maintainers and signalmen to make repairs of a minor or limited nature in the field, "otherwise" when special parts or repair were needed, the meters were readily sent to the Signal Repair Shop for complete repair. Here, the meters in question were sent, as "to have all signal repair work possible done in our shop."

We find that the intent of the parties, is that the preponderance of repair work on the property is to be done by the Signal Repair Shop but there are obvious exceptions, in various cases, that might arise in the field that would require minor or limited repairs.

For the foregoing reasons, the Signal Repair Shop is not granted exclusivity of on property repairs of all meters.

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 Employees involved in this dispute are respectively Carrier and Employees 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 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 23rd day of July 1965.