

**Award No. 13905**

**Docket No. SG-13979**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Daniel House, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**GREEN BAY AND WESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Green Bay and Western Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, when it did not call Mr. James B. Van Natta, Signal Maintainer, Green Bay territory, Green Bay, Wisconsin, on April 26, 1962, for signal failure at Military Avenue, Green Bay, Wisconsin.

(b) Mr. James B. Van Natta be compensated for a call of two (2) hours and forty (40) minutes at rate and one-half for call that was taken by Mr. Louis J. Rohr, Supervisor of Signals and Communications.

**EMPLOYEES' STATEMENT OF FACTS:** On the evening of April 26, 1962, the signal at Military Avenue, Green Bay, Wisconsin, was operating slowly and L. J. Rohr, Supervisor of Signals and Communications, was called instead of the regularly assigned Signal Maintainer James B. Van Natta. The Signal Supervisor is not an employee who is covered by the Rules of the effective Agreement.

The Supervisor responded to the call and determined that the cause of the failure was weak batteries. Mr. Van Natta was advised of the condition on the following day and made the necessary corrections.

The Claimant, the regular assigned maintainer on this territory, was available, but he was not called.

Inasmuch as Rule 16 clearly and specifically provides that the regular assignee will be called, and Carrier failed and/or refused to do so, Local Chairman Norman Parizek, in a letter dated May 21, 1962, filed a claim on behalf of James B. Van Natta for two (2) hours and forty (40) minutes at the punitive rate of pay. See Brotherhood's Exhibit No. 1.

tainers and is silent as to inspections, so the inference is perfectly clear that the parties to the agreement intended that inspection of signals was not the exclusive work of signal maintainers and recognized the fact that the right to make inspections of signals is inherent in the position of Supervisor of Signals and Communications.

Because we are a small railroad and consequently there is a small signal force to supervise, the parties to the agreement recognized that supervision alone would not keep the Supervisor of Signals and Communications reasonably occupied, and some provision had to be made to compensate for the small amount of supervision required. Accordingly, the parties agreed, and this agreement is embodied in the second paragraph of Rule 1, that so long as there are four regularly assigned positions in the Signal Department, that the Supervisor of Signals and Communications, or any other officer for that matter, could perform any amount of signal work without claim from any employees of the Signal Department. Because the Supervisor of Signals and Communications in this particular instance performed only an inspection, this is a moot question as regards this particular claim. However, it should be pointed out that there were four regularly assigned positions on the date of claim, and within the framework of the agreement, it was perfectly proper for Supervisor Rohr to not only inspect the signal but also to make the necessary repairs. The Employees are therefore in the very awkward position of protesting because the Supervisor of Signals and Communications made an inspection when actually the agreement provides that he not only had the right to make an inspection but he could have made all the necessary repairs if he saw fit to do so, without violating the agreement.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was on call under the terms of Rule 16 on the evening of April 26, 1962. That evening the Train Dispatcher on duty received a call from the Highway Police reporting the automatic signals at Military Avenue as not functioning properly. The Dispatcher called Supervisor Rohr giving him the information and requesting that he determine the trouble. On April 27th Signal Maintainer Van Natta corrected the situation by installing new batteries.

Brotherhood contends that Supervisor Rohr's inspection of the trouble and his determination of what needed to be done to correct it constituted trouble shooting work belonging to the Brotherhood and specifically belonging to the Claimant. Carrier contends that the work involved does not belong exclusively to Brotherhood under the Scope Rule, because it is not there listed and is not of a kind intended to be reserved to Brotherhood by the rule.

The Scope Rule and Rule 16 are as follows:

"Rule 1. The rules contained herein shall govern the rates of pay, hours of service and working conditions of all employees in the Signal and Communications Department—engaged in the construction, installation and maintenance of all signals, interlockings, signal lines and cables, telegraph and telephone lines and cables, pole lines, pole line supports, line wire and cable support, power lines and cables, electric lighting, heating and power apparatus, as heretofore performed by the Telegraph and Telephone Department, including telephone and telegraph office equipment, wayside or office equipment of Company owned communicating systems, electric lighted

switch lamps, highway crossing protection, including the field repair and adjustment of electrical, telegraph, telephone and signal equipment, and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work—represented by the Brotherhood of Railroad Signalmen; namely, Signalmen or Signal Maintainers, Assistant Signalmen or Assistant Signal Maintainers and Helpers.

Work generally recognized as signal or communications work as may be required by the Supervisor of Signals and Communications or any other officer regardless of title, who is recognized as being the head of the Signal and Communications Department, will not be regarded as coming within the scope of this agreement and may be performed without claim from other employes, as long as the force of the Signal and Communications Department is not reduced below four regularly assigned positions.

Nothing in this agreement shall be construed to prevent the contracting out of electrical work, when necessary or desired, and especially where there is any conflict with local building codes or ordinances requiring the use of licensed electricians or where the work must conform to certain local requirements or standards.

It is understood the following classifications shall include all the employes of the Signal and Communications Department performing the work enumerated under the heading of 'Scope.'

Rule 16. Subject to Call. Signal Maintainers recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management where they may be called. When such employes desire to leave their home station or section for a period of 3 hours or more, they will notify the person designated by the Management that they will be absent, about when they will return, and when possible, where they may be found. Unless registered absent, regular assignee will be called."

In its Ex Parte submission, Carrier states as a moot argument that even if the work had been of a kind belonging exclusively to Brotherhood under the first paragraph of the Scope Rule, the second paragraph of that Rule would specifically except it when it is performed, as it was in this case, by the Supervisor of Signals and Communications.

In its Rebuttal Brotherhood met this "moot" contention by asserting that the exception in the second paragraph of the Scope Rule was not applicable to the facts in this case because, at the time the work was performed by Supervisor Rohr the force had been reduced to three regularly assigned positions; thus, according to Brotherhood, the required condition for the operation of the exception was not present. Brotherhood also argued in its rebuttal, that even if there had been four regularly assigned positions, assignment of the work outside of regular hours to the supervisor would violate the specific requirement of Rule 16 that for such work the "regular assignee will be called." There is no dispute that Claimant was the regular assignee under Rule 16 at the time in question.

If, as argued by Carrier, the work performed by Supervisor Rohr did not belong exclusively to Brotherhood under the first paragraph of the Scope

Rule, then clearly there would be no basis for the claim by Brotherhood that Claimant should have been called to perform it under Rule 16 and the argument about the second paragraph of the Scope Rule would be moot. The record shows that Supervisor Rohr did not inspect the signal to determine whether or not work was needed to correct its malfunction; it was already known that the signal needed repair; Supervisor Rohr determined what needed to be done to fix the signal; he diagnosed the source of the trouble. In Award 4828, a case in which like in this one, the Scope Rule did not specifically name inspection work, and in which the Scope Rule was otherwise similar to the Scope Rule in this case, we said:

"The foregoing Scope Rule clearly includes testing and inspecting of apparatus. Such work is necessary, not only to determine the cause of trouble after it has occurred, but also as a safeguard against functional failure . . .

It will be conceded at the outset that all inspecting of signal apparatus is not reserved by the Agreement. All supervisory officers are charged with varying amounts of inspection work which is inherent in their positions. But it does not include the inspection and testing necessary to the proper installation, maintenance and repair of the signal system."

We find that the work performed by Supervisor Rohr was of the kind reserved for Brotherhood under the first paragraph of the Scope Rule. Carrier's "moot" contention thus requires determinative discussion.

While it is not explicit in the record that Carrier's argument based on the exception in the second paragraph of the Scope Rule was before the parties on the property, Brotherhood did not claim that it was an issue newly introduced after the dispute left the property; from this we conclude that the issue was presented on the property, and Brotherhood's contention that the exception could not operate because less than four positions were regularly assigned should have been supported with evidence introduced on the property. Brotherhood's assertion in its Rebuttal that there were only three such positions was made too late for us to give it any weight in deciding the matter, and we find that Brotherhood has failed to prove that the exception was inoperative because of absence of the required condition.

We are left then with the apparent conflict between applying the specific exception in the second paragraph of the Scope Rule that the performance by the proper supervisor of work otherwise reserved to the Brotherhood takes the work performed on that occasion out from under the scope of the agreement and the requirement of Rule 16 that the regular assignee will be called for such repair work. From the evidence in this record it appears that the conflict is more apparent than real. If we are to find that the exception in the Scope Rule was intended to be limited in its application by conditions other than those set forth in its text, such as, as is argued by Brotherhood, that the exception does not apply to work covered by Rule 16, we would need to have before us convincing evidence that such other limitation was intended by the parties. No such evidence is in this record. We find that the work performed by Supervisor Rohr on this occasion was by his performance of it removed from the scope of the agreement and thus from the applicability of Rule 16.

**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 15th day of October 1965.