

Award No. 13937

Docket No. SG-14219

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company that:

(a) The Carrier violated the Scope, Classification and other provisions of the Signalmen's Agreement when it failed to allow twelve hours time to Mr. G. W. Lewis on account of Mr. Steele performing work on or about March 29, 1962.

(b) Signal Maintainer Lewis, Cherokee Yards, Tulsa, Oklahoma, be allowed twelve hours' pay at his respective overtime rate of pay.
[Carrier's File: D-3760; D-3730]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier assigning to a supervisory officer not covered by the Signalmen's Agreement the "work" of transporting a ditch digging machine from Tulsa, Oklahoma, to St. Louis, Missouri, on or about March 29, 1962. The digger was loaded on a trailer and pulled behind a Company automobile driven by General Foreman M. R. Steele from Tulsa to Springfield, Missouri, on March 29, 1962, and on the following day, the movement to St. Louis was completed.

The ditch digger was purchased by the Carrier shortly before the date of this claim and had been used by a signal gang at Tulsa immediately prior to its removal to St. Louis by the general foreman, where it was used by another signal gang.

Prior to the purchase of this particular digger, the signal employees had used another larger digger, which was self-propelled. It was used by other departments too; however, when employees of the signal department used it, an employee covered by the Signalmen's Agreement operated and transported it from one location to another.

Mr. R. E. Testerman, Superintendent Signals, stated in a letter dated July 11, 1962, addressed to General Chairman J. T. Cunningham that:

"The particular ditch digger involved in this claim is the type which must be transported on a trailer if to be moved any great

It may be that the driver of the truck, which has special equipment, is performing work within the scope of the Signalmen's Agreement when operating this equipment in doing T&S Department work but that does not entitle the Brotherhood to have its employees assigned to the position, the principle duties of which are not within the scope of its Agreement. There are proper methods available by which that matter can be disposed of."

It is the Carrier's position that the disputed work is not of the kind that falls within the scope of the current Signalmen's Agreement.

In the dispute that resulted in Award 5046 (Carter) a T&S Inspector used an Electric Traction truck to transport telegraph and signal material from Baldwin Tower to Lampkin Street, Marcus Hook and Bellevue. The Board found:

"The material being moved was being distributed between Signal Maintainers' stations. It was not being hauled insofar as the record shows in connection with its actual use in signal construction or maintenance work. Under the previous awards of this Division, the work in question was not the exclusive work of signalmen. Until it becomes an integral part of a signal construction or maintenance job, the signalmen have no exclusive right to its handling. Consequently, work in connection with the moving of materials to be used by signalmen at some future time is not exclusively signalmen's work. * * *."

It was said in Award 6512 (Rader) where other than Signalmen were used to handle signal materials:

"Also that the mere handling of signal materials is not signal work. Citing Award 5046."

The Organization is seeking payment of twelve hours' pay at the overtime rate, but it has never advised the Carrier of the basis for such claim. It is the Carrier's position that the claim is unmeritorious, and under any and all circumstances claim for more than four hours at pro rata rate is improper.

The claim has neither merit nor agreement support and should be denied.

The Board is requested to find in favor of the Carrier and deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Driving a company owned automobile a General Foreman towed a ditch digging machine from Tulsa, Oklahoma to St. Louis, Missouri. Signalmen aver that: (1) the machine had been used in Tulsa on signal work and was transported to St. Louis to be used on signal work; (2) the established practice on the property was for employees covered by the Agreement to transport ditch digging machines from one signal job to another if there was no intervening period when the machine was used by other departments; (3) the practice vests in employees covered by the Agreement, the exclusive right to the work; and (4) the transportation here involved, having been accomplished by an employee not covered by the Agreement, violated the Scope Rule.

Throughout the handling of the Claim on the property it was denied for the given reason that Carrier found nothing in the Agreement specifically assigning such equipment nor its transportation to Signalmen.

The issue is whether the work involved in transporting the machine was "work generally recognized as signal work" within the meaning of those words as used in the Scope Rule. Because the words are general in nature, Signalmen, to prevail, had the burden of proving that in past practice, in like circumstances, the transporting of the machine had been exclusively performed by Signalmen.

When, in the handling of the Claim on the property, the Carrier denied Signalmen's averment of exclusive right to the work, Signalmen was put to its proof. Signalmen failed to adduce any factual evidence to prove the averment. It, therefore, failed to satisfy the burden of proof. We will dismiss the Claim for lack of proof.

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 Claim fails for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.