# Award No. 13970
# Docket No. SG-13559

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**(Supplemental)**

**Don Hamilton, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN

## BALTIMORE AND OHIO RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company:

(a) That the Carrier violated the scope rule of the Signalmen's Agreement when on September 25 and 26, 1961 and on October 16 and 26, 1961, they assigned the duties of installing batteries, battery boxes and connecting electric lighting circuits, to employes not covered by or being paid under the provisions of the Signalmen's Agreement, on the Berlin, Coleman and S. & C. Sub-Divisions of the Pittsburgh Division, where switch and/or derail lamps were changed from oil lighted to electrically lighted lamps.

(b) That all work in connection with installation and maintenance (past, present or future) of electrically lighted switch and/or derail lamps is work coming within the scope of the Signalmen's Agreement, by virtue of past practices on this Carrier for many years.

(c) That Signal Maintainer, H. A. Smith and Assistant Maintainer Dale Thornton, Rockwood, Pa., be paid an equal amount of hours at their respective rates of pay as that paid to employes not covered by the Signalmen's Agreement who performed this generally recognized signal work.

**EMPLOYES' STATEMENT OF FACTS:** On September 25 and 26, 1961, and October 16 and 26, 1961, the Carrier assigned employes who hold no seniority or other rights under the current Signalmen's Agreement to install electrically lighted switch lamps on the Berlin, Coleman and S and C Sub-Division of the Pittsburgh Division. The switch lamps in question were formerly oil burning lamps that had been converted to electric type in the Carrier's Cumberland Signal Shop. It has been the past practice on this

It is quite apparent that these switch lamps are no part of the Carrier's signal system. They are certainly not "wayside equipment necessary for cab signal, train stop and train control systems." In a word they are not "signals". There is no electrical connection of any kind from the conversion units to any signal power system.

In point of fact, there has been no violation of the Scope Rule of the Signalmen's Agreement nor of any other rule in the Signalmen's Agreement.

The agreement between this Carrier and its employes represented by the BMWE, effective April 1, 1951, carries the classification of "Lampman" or "Lamp tender". For many years prior to their conversion from oil to battery operation, MW forces maintained these oil burning switch lamps, without protest. The conversion from oil to battery operation did not substantially or materially alter the character of the work.

**This Division has already authoritatively held that under circumstances where track forces traditionally have performed the work of maintaining oil burning switch lamps the Carrier is required to utilize the services of such employes in converting such switch lamps to battery-operation:**

In this Division's Award 9984 (BMWE v. Reading Co.) a claim was made that that Carrier had violated its agreement with the BMWE when signal forces were used "* * * to replace oil burning switch lamps with battery-operated switch lamps and to maintain such switch lamps in the Belmont-West Falls Yard area Philadelphia Division * * *."

This Board, with Referee Weston participating, upheld the position adopted by the Organization and ruled in the "Opinion of Board" in full as follows:

"**OPINION OF BOARD:** This dispute stems from Carrier's use of Signalmen rather than Trackmen to install and maintain electric switch lamps in the Belmont-West Falls Yard area at Philadelphia.

Since the Scope Rule of the applicable Agreement contains no express reference to the disputed work, it is appropriate to examine the practice of the parties under that Rule to determine their intent. Prior to the installation of the electric switch lamps in September 1955, the switch lamps used in the Belmont-West Falls Yard were of the oil burning variety. There appears to be no controversy that Trackmen traditionally and consistently performed the work of installing, cleaning, filling, repairing and otherwise maintaining the oil burning switch lamps.

We are satisfied from the evidence in the record that the change to electric switch lamps is not of such nature as to alter substantially the character of the disputed work. In some areas, as Carrier concedes, no other properties to be sure, trackmen are used to maintain electric switch lamps; while this fact is not controlling, it does indicate that these duties are not of such a complex and technical nature as to require special skills not possessed by trackmen.

The removal of a significant area of responsibility from the work content of a position tends to emasculate the applicable collective bargaining agreement and is therefore always of critical im-

portance. Where as here Petitioner has shown to our satisfaction that the trackmen have traditionally installed and maintained switch lamps and the change in the type of lamp to be maintained has not substantially altered those duties, no valid basis is perceived for depriving the trackmen of that work. It is not surprising that this Board has reached a contrary result in other cases involving different factual situations (See Awards 7299, 4584, 4452, e. g.) since the question as to the effect and scope of the change is one of fact to be decided under the special circumstances of each case. cf. Awards 4448, 864.

On the basis of the record now before us, it is our conclusion that the work of installing and maintaining electric switch lamps in the Belmont-West Falls Yard at Philadelphia, excepting electric wiring work, belongs to the trackmen. We are excluding electric wiring work since it appears from the record that such work, by skill and tradition, belongs to a class of employes other than maintenance of way men.

For the reasons mentioned in a long line of Awards including 9333, 9248, 9205 and 8526, we do not agree with Carrier's contention that the claim is defective because Claimants are not specifically named. The claim is sufficiently clear and the Claimants readily ascertainable.

As to Carrier's obection that this is a jurisdictional dispute between Petitioner and the Signalmen's Organization which we are neither equipped nor empowered to decide, we find that the other Organization has been duly notified and heard from regarding the claim and we believe that this Board has the necessary jurisdiction of the subject matter and the parties concerned to dispose of the dispute at this time. See Award 8070 and decisions therein cited.

The further point has been raised by Carrier, and disputed by Petitioner, that the monetary claim must in any event be denied since it is "for nothing more than a penalty" and this Board lacks authority to assess penalty payments in the absence of an appropriate contract provision. The positions of both parties on this point are reinforced by lengthy briefs containing numerous citations of awards and other authorities.

In this Referees opinion, "penalty" is one of those words ("jurisdiction" is another) that are loosely and inaccurately used in awards under our informal procedures. In some of the cases that came before this Board, a collective right may be involved that under suitable circumstances may warrant the sustaining of a monetary claim that goes beyond the actual and direct financial loss suffered by the individual employes affected by the violation. However, we do not consider such payments to be reasonable or desirable under the circumstances of the present case, particularly since the violation involved a difficult personnel problem and does not appear to have been of a wilful or flagrant nature. See Awards 9415 and 5186.

In view of the foregoing considerations, we will sustain the first part of the claim in its entirety and the second to the extent that the Claimants shall be made whole for any loss they may have suffered as a result of the violation we have found to exist.

**CARRIER'S SUMMARY:** This Division has authoritatively ruled upon the exact same issue presented in the instant case. There is no dispute between the parties here, and there can be no dispute, but that the work of maintaining the oil burning switch lamps on the Pittsburgh Division had always been performed by track forces, and without protest. This Carrier has now, and had then, every proper right to reply upon the holdings of this Division in a similar case involving precisely identical circumstances.

The conversions involved the installation of carbonaire battery conversion units. There was no electrical connection from the conversion units to any signal power system. They were not operated by any signal AC power supply: their sole power source was a battery. No such work has ever been done by Signal employes on the Pittsburgh Division. As this Board pointed out in Award 9984 "* * * the change to electric switch lamps is not of such nature as to alter substantially the character of the disputed work * * * these duties are not of such a complex and technical nature as to require special skills not possessed by trackmen * * * whereas here petitioner has shown to our satisfaction that the trackmen have traditionally installed and maintained switch lamps and the change in the type of lamp to be maintained has not substantially altered these duties, no valid basis is perceived for depriving the trackmen of that work. * * *." In a word, there is no valid claim coming from employes under the scope of the Signalmen's Agreement. This claim at all its parts is without merit and should be denied. The Carrier respectfully requests that this Division so rule and the claim in its entirety be denied.

**OPINION OF BOARD:** In this case, the Organization alleges a violation of the Scope Rule, as a result of the Carrier assigning track forces, instead of signal maintainer's, to convert oil burning switch lamps to electrically lighted lamps.

The Organization relies in part on Award 11100 and the Carrier relies in part on Award 9984.

In Award 9984 (Weston), it was found that the Carrier's use of Signalmen, rather than Trackmen, to install and maintain electric switch lamps, was a violation of the Maintenance of Way Agreement.

To this finding, the Carrier members of the Third Division, dissented.

The award indicates that the finding was based on the fact that the Trackmen had, "traditionally and consistently performed the work of install ing, cleaning, filling, repairing and otherwise maintaining the oil burning switch lamps"; and that the record indicated that, "the change to electric lamps is not of such a nature as to alter substantially the character of the disputed work."

The award concluded, "On the basis of the record now before us, it is our conclusion that the work of installing and maintaining electric switch lamps in the Belmont-West Falls Yard at Philadelphia, excepting electric wiring work, belongs to the trackmen. We are excluding electric wiring work since it appears from the record that such work, by skill and tradition, belongs to a class of employes other than maintenance of way men."

Award 11100 (McMahon) was processed to this Board by the Brotherhood of Railroad Signalmen, protesting Carrier's assignment of Maintenance of Way Employes to install and maintain electric lighted switch lamps in the Allentown Yard on the Pennsylvania Division.

The Board found, "In the record here, the Organization has introduced proof that work as claimed here, has by tradition and practice been performed by signalmen, until the present claims arose."

The claim of the signalmen was sustained.

To this finding, the Carrier members of the Third Division (Supplemental) dissented.

We are of the opinion that these two awards, which are cited as opposing and controlling precedent, serve only a limited function in our study of the instant dispute.

It appears that each case was decided on the basis of the peculiar facts incident to the past practice involved in the particular claim. The cases do not appear to enunciate any fundamental principles for our use in the case at bar, other than the general proposition, that we should determine the past practice and award the work in conformity with the particular record involved in each claim.

We are of the opinion that the record in this case establishes that Signalmen have for many years converted, installed and maintained electric switch lamps on this property. We do not accept Carrier's argument that we are restricted only to an examination of the past practice "in this territory."

We hold that the Carrier violated the Agreement, when it assigned the work involved to the track forces. We are limiting this award to a determination of this particular question.

Award 9984, holding that Maintenance of Way employes and not Signalmen, should perform this type of work, was handed down July 14, 1961.

The incidents assigned as error in the cases at bar, occurred in August, September and October of 1961.

Award 11100, holding that Signalmen, not Maintenance of Way employes should perform this type of work, was handed down January 31, 1963.

Carrier argues in this case, that it was simply following the one-month old opinion recited as Award 9984, when it made the assignments involved in these claims.

We do not wish to be a party to any action which would frustrate any person subject to the rulings of this Board. We are of the opinion that Carrier may have thought it was acting in accordance with the desire of this Board when it made the assignments in these cases. Even though we do not believe they should have so interpreted Award 9984, in view of the varying factors inherent in these cases; we will take notice of the general confusion which exists in this entire area, and will not penalize them for their alleged attempt to comply with what they may have believed were the orders of this Board.

**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 was violated.

AWARD

Claims A and B sustained.

Claim C denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1965.