Award No. 13971
Docket No. SG-13560

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

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 August 10, 11 and 15, 1961, they assigned the duties of installing batteries, battery boxes and connecting light circuits to employes not covered by or being paid under the provisions of the Signalmen's Agreement, on the Boswell, Coleman and Berlin Sub-Divisions of the Pittsburgh Division where switch lamps were changed from oil to electric lighted lamps.

(b) That Signal Maintainer H. A. Smith, Rockwood, Pa., and Assistant Maintainer John R. Hannah (Senior Furloughed Assistant) 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 August 10, 11 and 15, the Carrier assigned persons who hold no seniority or other rights under the current Signalmen's Agreement to install electrically-lighted switch lamps on the Boswell, Coleman and Berlin Sub-Divisions. 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 Carrier for many, many years to assign work of converting, installing and maintaining electric switch lamps to employes covered by the Signalmen's Agreement.

The employes who were assigned to install the switch lamps in question recognized that it was work properly belonging to the Signalmen's Craft, and have a claim pending against the Carrier for Signalmen's rate of pay for the installation work.

dition requiring prompt action and the time an employee covered by this Agreement can be made available."

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 importance. 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: We hold that the opinion adopted in Award 13970, is determinative of the issues involved in this case, and hereby adopt the opinion therein contained.

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

Claim A sustained.

Claim B 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.