

Award No. 14343

Docket No. SG-14443

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE

BROTHERHOOD OF RAILROAD SIGNALMEN

THE 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:

That four hours' pay be allowed Signal Maintainer A. R. Alford at pro rata account other than signal employes making alterations to the train order transmitter at J Tower, Willard, Ohio, on April 25, 1962.

EMPLOYES' STATEMENT OF FACTS: Employes not covered by or classified in the current Signalmen's Agreement repaired a train transmitter at "J" Tower, Willard, Ohio, on April 25, 1962. This train order transmitter was installed about 1947 by signal forces, and has been maintained continuously since that time by signal forces.

This train order transmitter (referred to on some railroads as a train order delivery post or train order hoop post) is located in an upright position near the track, and is used for the purpose of delivering written train orders or other written messages to employes on moving trains.

The written train order is tied in a string that is in the form of a loop and placed in a detachable train order hoop. The hoop has an extended shaft that is placed in a bracket on the train order transmitter. The on-train employe extends his arm as the train passes, and the string holding the train order is caught on his arm. The train order delivery hoops (there are two—one for the Engineer and one for the Conductor) may be removed from the transmitter (or post) after the train has passed.

Train order transmitters of this type are usually used in conjunction with a train order signal—a signal used to indicate to a train whether or not it will receive orders. At this location, however, there is no train order signal. Installation and maintenance of train order signals and accompanying train order transmitters, or train order delivery posts, is generally recognized as signal work on many railroads.

order board J Tower" on April 25, 1962.

This work performed by a B&B carpenter was in accord with the prevailing practice on this Carrier in the maintenance of so-called "train order transmitters."

Subsequently, Signal Maintainer A. R. Alford submitted claim for four hours' pay at pro rata rate "account other than signal employees making alterations to the train order transmitter at J Tower, Willard, Ohio, on April 25, 1962."

OPINION OF BOARD: The Joint Statement of Agreed Upon Facts signed by the parties is in part as follows:

**"MEMORANDUM OF CONFERENCE HELD BY EXCHANGE
OF LETTERS**

* * * * *

Joint Statement of Facts

On April 25, 1962, Asst. Division Engineer J. R. Spicer and Track Supervisor E. L. Riggleman inspected the train order transmitter at J Tower, Willard, Ohio. There were complaints from the trainmen that they had to reach too far to get orders on the caboose. Mr. Spicer decided that the lower message hoop should be extended six inches and he removed the hoop and took it to the carpenter shop at Willard to have the handles adjusted.

Carpentered Jacob Pitzen made longer handles, charging two hours to 'repair message holder for order board J Tower' on April 25, 1962.

Neither Mr. Spicer or Mr. Riggleman hold any seniority under the Signalmen's agreement. However, neither of these persons did any actual work.

The train order transmitter was installed and has been maintained continuously by signal forces since its installation about 1947.

Contention of the Committee

It is the position of the Signalmen's Committee, that the installation, maintenance, modification and/or repair of train order transmitters accrue to Signal Department employees under the Scope of our Agreement and the past practice on this Carrier.

It is our contention that other than Signal Department employees should not have been permitted to perform service as indicated, on this train order transmitter.

Contention of the Division Engineer

It is my contention that this work is not Signalmen's work. Also, that Mr. Spicer or Mr. Riggleman did not do any work regarding this train order transmitter.

Decision of Division Engineer

Claim is declined."

* * * * *

The Scope Rule reads as follows:

"SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employees classified in Article I of this Agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair and painting of:

(a) Signals including electric locks, relays and all other apparatus considered as a part of the signal system, excluding signal bridges and cantilevers.

(b) Interlocking systems, excluding the tower structure.

(c) Highway crossing protection controlled or actuated by track or signal circuits.

(d) 1. Signal Department conduits, wires and cables, overhead or underground.

Note: See Mediation Agreement of May 5, 1942, and agreed interpretation thereto appearing on pages 52 and 53 with respect to reconstruction and/or renewal of poles used jointly by Railroad and Western Union.

2. Power lines installed primarily for signal purposes. Where power is supplied from signal power lines for other purposes Signalmen's work will include line taps, transformers and service line up to and including a fused switch adjacent to said power line. Where power is supplied from other sources for Signal Department purposes, Signalmen's work will exclude work from such source to and including a fused switch or approved receptacle at designated point of delivery. Signalmen's work will include all work from such point of delivery to and including signal facilities.

(e) Wayside equipment necessary for cab signal, train stop and train control systems.

(f)

(g) Centralized traffic control systems.

(h) Spring switches where point locked or signal protected, excluding work normally performed by track forces.

(i) Bonding of all track except in electrical propulsion territory.

(j) All other work generally recognized as signal work.

No employees other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein except that signal supervisory and signal engineering forces will continue in their supervisory capacity to make such tests and inspections of all signal apparatus and circuits as may be necessary to insure that the work is installed correctly and properly maintained. The term 'emergency' as used herein is understood to mean the period of time between the discovery of a condition requiring prompt action and the time an employee covered by this Agreement can be made available."

The Scope Rule does not contain any express reference to the work in dispute in this case.

The train order transmitter, in question, is located at Willard, Ohio. It consists of a metal pole which is located in an upright position near the track and is used for the purpose of delivering written train orders or other written messages to employees on moving trains. The written train order is tied in a string that is in the form of a loop and placed in a detachable train order hoop. The hoop has an extended shaft, that is placed in a bracket on the train order transmitter. Train orders are placed in the hoops by means of strings tied in such fashion that trainmen can reach out and secure them easily. Its purpose is to permit train crews to secure train orders from cabooses while moving or proceeding through the area past the transmitter.

The Carrier claims that it received numerous complaints from its trainmen that they had to reach too far in order to get the orders on the caboose. That after an examination and inspection of the transmitter, in question, it was found that the condition complained of could be remedied by extending the shaft, that is placed in the bracket, about six inches. The shaft and/or hoop was removed from the metal pole and taken to the Carrier's carpenter shop at Willard where longer shafts and/or handles were made by one of the carpenters employed at the shop.

The Brotherhood contends and claims that the train order transmitter involved herein is covered by the Scope of the Signalmen's Agreement and that any work performed in connection therewith should only be performed by signal employees and not by any other employees of the Carrier.

The Carrier contends and claims that the work performed was not Signalmen's work and that such work had been done by other crafts on the system of the Carrier; that the work in question was carpenter work and not signal work.

The sole issue that requires determination here is whether or not the work in question was incidental to the maintenance of signal apparatus, and whether or not the train order transmitter is part of the signal apparatus which is considered as a part of the signal system covered by the Agreement.

The Brotherhood contends that the train order transmitter is a part of the signal system and that therefore the work of repairing it is reserved exclusively to them by the express terms of the Scope Rule. While the Scope Rule is explicit in covering the installation, * * * maintenance and repair of signals and all other apparatus considered as part of the signal system, it does not explicitly name train order transmitters, nor does it define signals or apparatus considered as part of the signal system so as to include or to exclude train order transmitters.

Since the Scope Rule is silent and does not mention train order transmitters, the words "(j) All other work generally recognized as signal work" may be construed either to include or exclude train order transmitters. The language of the rule being ambiguous, intent may be found in past practice or custom of the parties in applying the rule.

The Brotherhood in support of its contention as to past practices and custom lists several places where it states "employees of the Signal Department have installed and maintained train order transmitters". (See page 13 of Record)

The Carrier in support of its contention states "When this case was discussed on the property of this Carrier, the Signalmen's Committee by inference conceded that * * * the work here involved was not specified as coming under the Signalmen's Agreement." It further states "On the Akron-Chicago Division, locale of the instant dispute, the practice decidedly favored giving the work of erecting and maintaining train order transmitters to B&B forces." (See page 56 of Record)

The Brotherhood has not presented nor introduced into this record that degree of evidence sufficient to establish a consistent practice adequate to support its reading of the Scope Rule. The weight of the evidence submitted impels the conclusion that on the system of the Carrier it has been the past practice for the disputed work to be done by employees not covered by the Brotherhood's Agreement.

Since the subject Agreement does not expressly confer jurisdiction over the disputed work exclusively to signal employees, and in view of the practice as here found, it follows that the Brotherhood does not have exclusive jurisdiction over the said work. A denial of the claim is warranted.

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 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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.