

Award No. 14676
Docket No. SG-13201

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Fort Worth and Denver Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope, when it assigned and/or permitted persons who hold no seniority or other rights under that agreement to install an electric switch lamp on the house track at Stamford, Texas, on or about December 29, 1960.

(b) The Carrier violated Article V, 1(a) of the August 21, 1954 Agreement when its letter of denial of January 12, 1961, failed to contain a reason for denying the claim.

(c) The Carrier should now be required to compensate Signal Maintainer F. W. Barton for two hours and forty minutes at his punitive rate of pay. [Carrier's File: SG-26]

EMPLOYEES' STATEMENT OF FACTS: On or about December 29, 1960, the Carrier assigned and/or permitted persons who hold no seniority or other rights under the current Signalmen's Agreement to install an electric switch lamp on the house track at Stamford, Texas, which is on the assigned signal maintenance territory of the Claimant, Mr. F. W. Barton.

Inasmuch as we consider that installing and maintaining electric switch lamps is generally recognized as signal work, and, as such, covered by the Scope of the Signalmen's Agreement, the Claimant submitted an overtime slip for two hours and forty minutes at the overtime rate of pay for December 29, 1960. The Carrier's Auditor denied the claim in a letter dated January 12, 1961 (Brotherhood's Exhibit No. 1).

Under date of February 4, 1961, the Brotherhood's Local Chairman presented an appeal (Brotherhood's Exhibit No. 2) to the Carrier's Superintendent Communications and Signals, Mr. A. E. Parnell, with a copy thereof to the Auditor as notice of the rejection of his decision. Mr. Parnell's letter of denial of February 8, 1961, is Brotherhood's Exhibit No. 3.

The General Chairman was not satisfied with Mr. Parnell's decision, so he presented an appeal to the Assistant to General Manager on March 26, 1961, with a copy thereof to Mr. Parnell as notice of the rejection of his decision. The appeal of March 26, 1961, is Brotherhood's Exhibit No. 4. The Assistant to General Manager's denial of April 11, 1961, is Brotherhood's Exhibit No. 5, and the General Chairman's reply thereto is Brotherhood's Exhibit No. 6.

The correspondence cited above indicates the claim was handled up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. The correspondence shows, however, that the General Chairman took exception to the Auditor's denial, which did not, in our opinion, contain a reason as required by Article V I (a) of the August 21, 1954 Agreement.

There is an agreement between the parties to this dispute, bearing an effective date of November 1, 1946, as amended, which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: In December 1960, Carrier had Maintenance of Way forces, sectionmen, install a battery operated switch light on switch stand on south house track switch at Stamford, Texas. The lighting arrangement for the switch stand consists of a light bulb kit, being substituted for the kerosene lamp, which receives electricity from a small No. 6 dry cell battery of 2.7 volts, contained in a box partially buried in the ground at the edge of head block tie.

This battery lighted switch light will operate efficiently from seven to nine months without a battery replacement and eliminates the labor required to maintain the old style kerosene switch light.

Section forces have always installed and maintained the old style oil switch lamps. Such switch lights have always been, and still are, a fixed signal governing the movement of trains no matter how lighted.

The section forces who installed and maintained the battery operated switch lights at Stamford, Texas, are subject to the agreement with the Brotherhood of Maintenance of Way Employees.

Claim was presented and progressed by the Brotherhood of Railroad Signalmen in behalf of Signal Maintainer F. W. Barton for payment for a call amounting to two hours and 40 minutes at his punitive rate of pay, based on the allegation that the sectionmen who performed this work violated the Scope of the Signalmen's Agreement in doing so, which claim was denied.

Agreement between the Fort Worth and Denver Railway Company and Brotherhood of Railroad Signalmen effective November 1, 1946, amended September 1, 1949, is on file with the Board and by reference is made a part of this Submission.

OPINION OF BOARD: We are faced with a contention by Petitioner that the official with whom this claim was filed failed to give reason for denial as required by Article V (a) of the August 21, 1954 Agreement. The Awards

of the Division, including those cited by Petitioner, when applied to the facts of this case, do not support the contention and it is therefore dismissed.

Petitioner contends that Carrier violated the terms of their agreement when it caused the installation of electric switch lamps to be performed by Maintenance of Way employees. Petitioner relies on that portion of the Scope Rule of the Agreement reading "all other work generally recognized as signal work" to support this claim. The Division has long held that when dealing with a general provision such as this, we will look to custom and practice. This then brings us to the conclusion that evidence of practice as contained in this record does not support the position of Petitioner. The claim, failing of proof, will be denied.

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 21st day of July 1966.