



Award Number 17706

Docket Number SG-18068

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL COMPANY

(Formerly New York Central Railroad Company—Lines West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Lines West of Buffalo):

On behalf of Leading Signal Maintainers—W. O. Spurgeon, N. N. McClure, A. E. Clark, and R. F. Reed—and Signal Maintainers—P. K. Goen, E. L. Black, D. E. Lamb, C. R. Wade, J. M. Wilson, M. J. Humes, and N. J. Brown—account Signal Inspectors, Relay Inspectors, Signal Gang Foremen, and Maintenance Foremen performing craft work in violation of the Scope Rule 1 of the Signalmen's Agreement at "I.J." and "B.X." Interlockings in connection with the remote control of "B.X." from "I.J.", as follows:

Maintenance Foreman F. L. Stevens	—March 20 to April 19, 1967
C. & R. Foreman R. R. Killion	—February 6 to March 30, 1967
C. & R. Foreman John Yates	—April 10 to April 20, 1967
Signal Inspector M. L. Liford	—April 3 to April 20, 1967
Signal Inspector M. F. Christien	—March 6 to April 20, 1967
Relay Inspector J. W. Purcell	—March 6 to April 20, 1967
Relay Inspector E. A. Clemons	—March 6 to April 20, 1967

EMPLOYEES' STATEMENT OF FACTS: During a period running from February 6, to April 20, 1967, a project was under way to establish a Control Station at "I.J." Interlocking plant, to remotely control signal and switch facilities at former "B.X." Interlocking plant.

In the process of this work, Foremen and Signal and Relay Inspectors were assigned to such work, as running wires in accordance with circuitry plans and connecting wires to relays and terminal board parts. In other words, the Foremen and Inspectors were assigned to the actual wiring of the project.

Claimants herein involved are Leading Signalmen and Signalmen who are covered by an Agreement separate and apart from the Agreement covering the Foremen and Inspectors.

Scope Rule 1, of the Agreement covering the employe claimants in the instant case reads as follows:

The foregoing transition required the relocation of the traffic-master type control panel, which controlled train movements through "BX", to "IJ". The relocation of the control panel, a direct wire remote control arrangement, required certain changes in circuits and the removal of others. On the various dates in March and April 1967 for which claims have been progressed, construction gangs, consisting of employees who were members of and represented by the Brotherhood of Railroad Signalmen, were engaged in effecting the necessary changes.

The specific work which was performed by the Maintenance Foreman, C. & R. Foremen, Signal Inspectors and Relay Inspectors, and which the Organization contends was exclusively reserved to claimants, has never been identified. In general terms, the work consisted of the installation of new wiring, wires which were to be removed were identified by affixing to such wires red tags, elimination of relays and relay contacts associated with previous signal projects from the working signal circuits, conducting of tests and checks to insure that the interlocking was functioning as intended. In the course of performing these functions, circuits were opened and corrected, either by soldering AAR posts or other type terminals. It is possible, although not a matter of record, that the employees performing the service made basis for the claim, found, in the course of their work, wires run to the wrong relay or wires which had been inadvertently omitted and made corrections in this respect. The foregoing would also apply to the connecting of cables which must be meggered and identified by inspectors.

Claims were presented and progressed on the basis that certain of the work performed by the Maintenance Foreman, C. & R. Foremen, Signal Inspectors and Relay Inspectors should have been performed by named claimants, and that in not so handling the Carrier violated the Scope Rule of the current Schedule Agreement with the Brotherhood of Railroad Signalmen.

OPINION OF BOARD: It is undisputed that in March and April 1967, certain work was carried on at Carrier's facilities at Indianapolis Terminal, Indianapolis, Indiana. The work involved preliminary activities for transfer of interlocking controls from one tower building to another located 3000 feet away.

The question presented to us is whether certain of this work, concededly performed by Maintenance Foremen, Signal Inspectors and Relay Inspectors coming under one agreement between the parties, was that which is reserved to Signal Maintainers and Leading Signal Maintainers (who are under a separate agreement between the same parties), the latter therefore having been improperly deprived of said work.

The parties are apparently in general agreement that the work in question included to some extent corrections of improper circuit connections, with attendant tasks of dismantling replaced hook-ups, joining the new electrical links and making "meggering" tests on the cables installed.

But the parties are in conflict on two critical factual issues—one concerning the full content and extent of the work done (and its effect), the other whether, and to what extent, there exist guarantees of exclusivity of such work to the classifications for whom the claims are made.

Carrier contends that the work done was marginal, incidental and supplementary to the extent reasonably unavoidable as corollaries of the supervisory and inspection process. It contends that, as such, said work was

within the span of duties intended and anticipated by the appropriate agreement job descriptions. In support thereof it cites the use in the job descriptions of Signal Inspectors and Relay Inspectors of statements that in addition to testing and inspecting, their work is to include "other duties associated therewith". As for the Signal Foreman, the only restriction on duties appearing in the job description is that "he will not be required to regularly perform any of the work over which he has supervision".

It is Carrier's contention that the Inspectors did work "associated" with their regular duties and that the work done by Foremen cannot be accurately described as the "regular" performance of work of their subordinates.

Employees, on the other hand, contend that the work done was in fact a "regular performance" of Maintainers' type of work, over a sustained period of time, involving total and continuous patterns of activity which may accurately be described as "the wiring of a project", work intended by the agreement for Maintainers.

We cannot find in the record the necessary proofs on which to resolve the factual conflict between the parties concerning the nature and degree of the work done. But even if there were put before us evidence to which could be assigned probative values for determining this conflict, it would not dispose of the controversy.

The needed determinant here is that on which the parties have their second disagreement: the extent to which they are governed by a mutual commitment to reserve exclusively to Claimants, the work in question.

The contract Scope clauses here do not express such guarantees. The statement in Rule 1. of the non-supervisory contract that "this agreement covers rates of pay, hours of service and working conditions" for such and such work is not a guarantee that said work is reserved exclusively to employees covered by that agreement. The further statement in Rule 2, that "the following classifications shall include all employees of the Signal Department performing such work described in Rule 1" is likewise no guarantee that the titles listed and only the titles listed are to be given the work described for them in each instance. There is language readily available for expression of such guarantees and we do not find it here.

Conversely, in the agreement covering Inspectors and Foremen, the listing of the titles and the job descriptions accompanying them do not on their face by any reasonable interpretation express either an exclusion to them of particular work (except for Signal Foremen) or a guarantee to them of specific work. Carrier correctly points out that the listing of titles and descriptions is preceded in Rule 1. by the heading "Classification" and the first sentences reads: "These rules will govern basis of pay and working conditions of the following classes of employees:". This does no more and no less than identify in general terms the employees who are to be covered by the benefits and conditions which are described by the rest of the agreement.

It is true, that there is inserted in the description for Signal Foreman, an express restriction against being required to "regularly" perform any of the work over which he has supervision. This is the one positive exclusion of work. On this, the factual impasse concerns whether the work done by the foremen here was a "regular" performance. As we have indicated above, we are unable to resolve that conflict from the record.

We have established by a long line of decisions that absent contract guarantees of exclusivity to work, only the existence of a history of practice and custom may serve to support such a mutual intent. In the record before us, Claimants do not prove such a background of support. Accordingly, they have failed to establish a claim based on those grounds.

We conclude therefore that the claims herein should not be sustained.

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.

A W A R D

Claims denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of January 1970.

Dissent to Award 17706, Docket SG-18068

The Majority has, by the use of many words, tortured both the rules and the facts and come up with an award that is not realistic; therefore, I dissent.

**/s/ G. ORNDORFF
G. Orndorff
Labor Member**