Award No. 18060
Docket No. SG-18384

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the agreement between the company and the employes of the Signal Department effective April 1, 1947 (reprinted April 1, 1958 including revisions) particularly Rules 16, 70, and the Scope Rule.

(b) Mr. E. V. Allison be compensated for two (2) hours and forty (40) minutes at his overtime rate for April 18 from 10:30 P. M. to 1:10 A. M. April 19, 1968. [Carrier's File: SIG 152-239.]

EMPLOYES' STATEMENT OF FACTS: On April 18, 1968, an automobile accident caused an interruption in electic power service on the territory of Signal Maintainer E. H. Ramey, Modesto, Calif. To provide a temporary replacement for the lost source of power, Assistant Signal Supervisor P. A. Radebaugh loaded a portable generator from the Merced Signal Shop into his truck at 10:30 P. M. and delivered it to Mr. Ramey at Modesto at 1:10 A. M. April 19. Mr. E. V. Allison (Claimant) is a Signal Maintainer assigned to the maintenance territory adjoining that of Mr. Ramey and headquartered at Merced.

There is an agreement between the parties to this dispute bearing an effective date of April 1, 1947, (Reprinted April 1, 1958, including revisions), as amended, which is by reference made a part of this dispute. The provisions of that Agreement here pertinent are:

"SCOPE

(a) This agreement shall apply to work or service performed by the employes specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employes covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, interlocking, spring switch locking devices, highway crossing protection devices and their appurtenances, wayside train stop

and the loading and transporting to the different points should be performed by an employee covered by the Agreement.

"As Mr. Radebaugh is a supervisory employe, not covered by any Agreement, his actions constituted a violation of the Agreement."

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose as a result of Carrier's Assistant Signal Supervisor, P. A. Rodebaugh, transporting in his truck a portable generator from the Merced Signal Shop, Merced, California, to a power pole line near Modesta, California, where power service was interrupted when an automobile struck said power pole line.

The Organization argues that the issue here is not, as Carrier contends, one of transporting material or equipment, but of maintaining the Carrier's signals in a serviceable condition; that the Scope Rule of the Agreement specifically embraces such work as here in question and reserves it to the Carrier's Signal Department employes; that inasmuch as the Scope Rule violation occurred on the assigned signal maintenance territory of the Claimant, Rule 16 requires that unless registered absent, regular assigned employes shall be called, in this case Claimant, who was not registered absent and was available for call; that Rule 70 entitled Claimant to damages for said violation.

Carrier's position is that the Scope Rule does not specifically reserve the work in question to Signal Department employes; that Claimant failed to present any evidence of exclusivity by system-wide practice, custom or usage; that Claimant was not the "regular assigned employe" entitled to be called in this instance; that Claimant did not suffer any pecuniary loss and thus is not entitled to damages if this Board finds that Carrier violated the Agreement; that the contention of the Organization that the standby generator was transported for immediate use was not raised on the property and cannot be now considered by this Board in the determination of this dispute.

This Board was confronted with a similar issue with the same parties to this dispute in Award No. 13347. The facts in said Award No. 13347 involved the transporting of a spring switch machine from Carrier's El Paso, Texas Signal Shop to Tucumcari, New Mexico to replace a damaged spring switch machine. Carrier's Assistant Signal Supervisor operated the El Paso truck. A truck was dispatched by Carrier from Carrizozo, operated by an Assistant Signal Supervisor with a Signalman along, to meet the El Paso truck at Valmont, New Mexico, where the trucks met and the machine was transferred from the El Paso truck to the Carrizozo truck. The Carrizozo truck returned to Carrizozo where the Signalman was released and the Assistant Signal Supervisor proceeded to Santa Rosa where the Santa Rosa Signal Maintainer joined him to proceed to Tucumcari to assist in the installation of the switch machine.

This Board in Award No. 13347 concluded:

"No awards have been found that support the proposition that the movement of material from a warehouse or material yard to a

signal construction job, is the exclusive work of signalmen though such work might be the signalman's in a given case. The awards do not support the rule, that the purpose for which the trucking will be done, as determinative of whether or not the work belongs to the signalmen, though such may be probative.

"The question is: Under the Scope Rule before us as hauling is not included specifically in the Agreement does the hauling in question belong exclusively to the signalmen, system-wide by practice, custom and usage on the property?

"The answer to this question in this docket is that we do not know from the evidence presented. The burden is on the Claimant, and for that reason the claim must be dismissed."

Using said Award No. 13347 as a criteria, and not finding said Award palpably erroneous, and further finding that Claimant failed to prove that the work of transporting or hauling the portable generator in question belonged exclusively to the signalmen, system-wide, by practice, custom and usage, we are compelled to deny the claim.

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 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 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 31st day of July 1970.

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