Award No. 18864
Docket No. SG-18588

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Railroad:

> On behalf of Mr. A. Licata for a minimum call of two (2) hours and forty (40) minutes for work performed on November 6, 1968 by employes of another craft. (SG–3–69)

EMPLOYES' STATEMENT OF FACTS: Claimant herein is Communications Maintainer A. Licata, with headquarters at Jamaica Station, Jamaica, New York. The dispute arose because on November 6, 1968, Bridge and Building Department employes painted terminal boxes, and removed and reinstalled floor outlets while working at the Engineering Building, Morris Park.

Inasmuch as the Signal and Communications Agreement covers the installation and maintenance of such equipment, a claim was filed on behalf of Mr. Licata, who should have been assigned to perform the work involved. The Scope Rule of the Signal and Communications Agreement is shown below for ready reference.

"SCOPE.

> These Rules, subject to the exceptions hereinafter set forth, shall constitute an Agreement by and between Wm. Wyer as Trustee of the Long Island Rail Road Company, Debtor and Telegraph and Signal Department Employes of the aforesaid Debtor Company of the classifications herein set forth engaged in the installation and maintenance of all signals, interlocking, telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone, and signal relays and the wiring of telegraph, telephone and signal instrument cases, car retarder systems, electric strip type switch heaters and all other work in connection with installation and maintenance thereof that has been generally

of the date of the decision of the highest designated officer of the Carrier.

(h) This rule shall not apply to requests for leniency."

Rule 26 is, in all material respects, identical to Article V of the August 21, 1954 National Agreement.

It is in this posture that this claim comes to your Board for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that the Scope Rule of the Agreement was violated when Bridge and Building Department employes were permitted by Carrier to paint terminal boxes and to remove and reinstall floor outlets while painting the engineering office in Morris Park. The Organization's position is that the installation and maintenance of signal and communication equipment, as involved in this dispute, is covered by said Scope Rule, and such was not disputed by Carrier.

Carrier raises a procedural defect, claiming that Rule 26 and Article V of August 21, 1954, time limit rules, were violated because (1) the Organization did not notify the Carrier official that his denial decision is rejected, and (2) the appeal was not made within 60 days from the date of the initial denial.

The Organization points out that said contention was not raised during the handling on the property, and cannot now be considered by this Board in determining the dispute. Carrier agrees that said procedural defect was not handled on the property. This Board has repeatedly held that charges or contentions not raised on the property cannot be considered by this Board in deciding a dispute. Therefore, since said contention was not handled on the property, Carrier's contention in this regard must be denied.

Regarding Carrier's contention that the Organization failed to cite a specific rule as being violated and therefore the claim should be dismissed, we find that Carrier in its letter of March 11, 1969 by Director of Personnel Relations to General Chairman, G. C. McGough, stated:

> "We have been investigating this matter with M/W Department and are convinced that the painting performed was not an infringement upon work covered by the scope rule of your agreement."

Thus, Carrier's contention in this regard is without merit and must be denied.

Carrier's defenses to this claim are: (1) that the incidental painting of the exterior of the terminal box and moving of the floor outlet is not work in connection with the installation and maintenance of Carrier's telephone and telegraphic equipment as contemplated in the Scope Rule; (2) that the painting performed was not done at the specific direction of any competent official of Carrier, and was not done in a conscientious effort to thwart the terms of the Signalmen's Agreement and if B&B employes encroached upon an area belonging to Signal Department employes, it was purely accidental and not done at the direction of Carrier; that the painting in question was for "decorative and appearance" purposes rather than for the purpose of maintaining

signal equipment; that Claimant suffered no loss and could not have performed the disputed painting because of working elsewhere on the date in question.

Carrier has cited Award No. 13010 in support of its position that the painting involved was not done for the purpose of maintenance. This Board in said Award No. 13010 stated:

> "The Brotherhood denies that the painting was for decorative purposes only and, in addition, asserts that even decorative painting would have the effect of delaying the need for preservative painting and, therefore, falls within the meaning of maintenance. However, there is no evidence in the record to support their assertion that the painting would have the effect of delaying future preservative painting. It would be speculative, at least, to presume that any additional cost of paint would delay needed painting and thus 'maintain' property.
>
> It is undenied that the painting was done at the same time a general tower painting project was completed. We believe the record supports Carrier's contention that the painting was done for appearance and decorative purposes rather than for 'maintenance' or preservative purposes. For these reasons the claim must be denied."

Finding said Award No. 13010 controlling in the determination of this dispute, we find that the painting in dispute in this instance was accomplished for appearance and decorative purposes rather than for maintenance or preservative purposes. Thus, we must 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.

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