

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19384
Docket Number SG-19020

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Lehigh Valley Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company on behalf of:

Signal Foreman D. Robbins, Signalmen M. Sar, J. Schmidinger, J. Lightcap, and J. Bennett and Signal Helper G. Fech. Claim is for one (1) day's pay each at their current respective rates of pay, due to the fact that on July 2, 1969, employees other than those covered by the Signalmen's Agreement (namely M of W employees) were used to move automatic crossing gates at Slatington, Pennsylvania.

OPINION OF BOARD: Due to the widening of a highway it became necessary to relocate a highway crossing protection device at Slatington, Pa. Employees covered by the Signalmen's Agreement were used to perform the re-locating with the exception of the actual moving of the device from its former location to the new site, a distance of some fourteen feet. For this work a crane operated by Maintenance of Way employees was used. This use of employees not covered by the Signalmen's Agreement is alleged to be a violation of the Scope Rule of the Agreement which reads as follows:

"Scope

This agreement covers rates of pay, hours of service and working conditions of all employees in the Signal Department (except supervisory forces above the rank of foreman, clerical forces and engineering forces) engaged in the work of construction, installation, inspecting, testing, maintenance and repair of signals, interlocking plants, automatic highway crossing protection devices and their appurtenances, wayside cab signal, train stop and train control equipment, car retarder systems, centralized traffic control systems, shop repairing of relays, signals, switch magnets, motors, et cetera, bonding of track for signal and interlocking purposes, and all other work generally recognized as signal work.

No employees other than those classified herein will be required or permitted to perform any of the work covered by the Scope of this agreement.

It is understood the following classifications shall include all of the employees of the signal department performing the work described under the heading 'Scope'."

The Carrier denies that the work at issue, the use of the crane, is covered by the above rule.

It has been correctly held that the use of a crane is not the exclusive work of any craft. It is, rather, the character of the work performed by the crane which should determine the craft from which the operator is drawn. See Award 1829 (Carter).

The movement of the crossing protection device is a sufficiently integral part of its installation so as to fall under the Scope rule quoted above. Accordingly we hold that the use of the employees not covered by the Agreement was a violation thereof. For a well reasoned award dealing with a fact situation analogous to the one at hand see Award 12323 (Seff). The following paragraph from that award is particularly applicable.

"It would seem that a reading of the Carrier's Ex Parte Submission (with its iteration and reiteration of personnel covered by the Signalmen's Agreement performing the bulk of the task in question, all being exclusively supervised by Signal Foremen and Assistant Signal Supervisors), creates the reasonable conclusion that the work in question was 'Signal work'. Reading the facts in the light of the Preamble to the Agreement, quoted supra, the said work must have been assigned to employees covered by the Signalmen's Agreement or the Carrier would have been in violation of the Agreement. Based on the facts in the instant case and the Agreement of the parties when the operation of the Spreader was performed by an employee other than a Signalman the Carrier did violate the Agreement. The Carrier states that no Signalman was qualified to operate the Spreader. Under these circumstances, the Carrier could have avoided a violation of its contract by writing an exception to the coverage but it did not do so."

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: EA Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.