

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19479  
Docket Number SG-19443

Frederick R. Blackwell, 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 Rail Road:

On March 27, 1970, employees of the B. & B. Department, while painting the Trainmen's Room and E. X. Tower in Brooklyn Terminal, painted all Communication equipment in each place. Installation, repairs, painting, etc. of Communication equipment is covered by the Scope Rule of our existing agreement.

Mr. J. A. Ryan, Communications Maintainer, be compensated four (4) hours for work performed by employees outside the Scope of our Agreement.  
/Carrier's File: SG-8-70/

OPINION OF BOARD: This is a Scope claim in which Signalmen allege that painting reserved to them under the Agreement was performed by Bridge and Building employees in violation of the Agreement. The alleged violation occurred on March 27, 1970 and gives rise to a claim that Mr. J. A. Ryan, Communications Maintainer, be compensated for four (4) hours work.

Notice of the instant dispute was given to the International Brotherhood of Teamsters, Local 808, representative of the involved Bridge and Building employees; such organization did not file a submission herein.

FACTS OF RECORD

The Agreement between the parties, bearing effective date of May 1, 1954, contains the following Scope Rule.

"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 Employees 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 recognized as telegraph, telephone, or signal work--represented by the Brotherhood of Railroad Signalmen of America and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees of the aforesaid Debtor Company specified herein, namely, foremen, assistant foremen, leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, signalmen, assistant signalmen, and helpers.

"EXCEPTIONS

(a) This Agreement shall not be construed as granting to employees coming within its Scope the exclusive right to perform the work of installing or maintaining other than Railroad owned facilities or equipment located on the property of the Long Island Rail Road Company, Debtor, Wm. Wyer, Trustee.

(b) This Agreement shall not apply to inspectors or assistant inspectors in the offices of the Chief Engineer and Engineer Maintenance of Way and such inspectors or assistant inspectors shall not be required or permitted to perform any of the duties of employees of the classifications set forth in this Agreement."

In addition to the Scope Rule, a February 16, 1954 Letter Agreement reads in pertinent part:

"This will confirm oral advice given you during our conference today that Telegraph & Signal Department Employees will continue to paint Telegraph & Signal equipment installed and maintained by the Telegraph & Signal Department Employees of the type and character now painted by such employees."

On March 27, 1970, Bridge and Building employees painted the Trainmen's Room and E. X. Tower in Brooklyn Terminal. In the course of the work, these employees painted communications equipment, consisting of, in the Trainman's Room, a generator box and a cable terminal box and, in E. X. Tower, a cable terminal box and a table on which an electrowriter was placed. Excepting the table, all of the equipment was permanently mounted on or in the walls.

On the property Carrier denied the claim on the ground that the painting was for decorative purposes and had no connection with maintenance of communication equipment. Carrier asserted further that the Bridge and Building painters did not remove or install any equipment accruing to Signalmen. In its submission Carrier advanced the further contentions that (1) encroachment on signalmen's work by B&B employees, if any, was accidental and not specifically done at Carrier's direction, and (2) Rule 26 was violated because, although it followed the proper chain of officers on the property in progressing its appeal, the Organization failed to give notice of rejection of decision to the officer immediately preceding the highest officer designated by Carrier to hear appeals. Carrier acknowledges that the foregoing (2) was not raised on the property, but asserts nonetheless that it is properly before the Board.

In its submission the Organization directly challenged the "decorative purpose" defense. It asserted that the primary purpose for painting equipment, buildings, etc., is to protect against weather and the like and that decorative purposes are also met is a contingent benefit of no consequence herein. In its rebuttal statement, the Organization asserted that the "accidental encroachment" contention was an admission of negligence by Carrier, and that Rule 26, not being raised on the property, could not be properly raised before the Board.

#### RULINGS ON PETITIONER'S CONTENTIONS

The record clearly establishes that certain pieces of communication equipment were painted by employees outside the Scope of the Signalmen's Agreement at the place and time asserted by Petitioner. Rule 26, not being raised on the property and being procedural rather than jurisdictional in nature, will not be considered herein. Accordingly, the question for decision by the Board is whether the disputed painting is reserved to Signalmen by the Scope Rule of their Agreement with Carrier.

As pertinent to this case the Signalmen's Scope Rule embraces the "maintenance of ... telegraph and telephone lines and equipment including telegraph and telephone office equipment wayside or office equipment of communicating systems..." The equipment herein involved is clearly within the

above description of communication equipment. Thus, Petitioner must establish that the painting of such equipment was for a "maintenance" purpose, as against Carrier's claim of a "decorative" purpose, to show a Scope Rule violation. The burden of proving the requisite facts by a preponderance of the evidence lies, of course, with the Petitioner.

However, Petitioner has not offered any evidence of probative value tending to meet this burden. Instead Petitioner has made the assertion that the primary purpose of the painting was to protect against weather and the like, i. e. maintenance, and that any contingent decorative benefit was inconsequential. Though this assertion is slightly different from what we conceive to be the correct application of the instant Scope Rule, the major problem is that Petitioner has offered no more evidence to prove "primary purpose" of maintenance purpose than it has offered to prove an unqualified "maintenance" purpose. In other words Petitioner's assertion is a conclusion which we do not take to be self-evident; hence, even if "primary purpose" was the proper criterion, we would not be able to find that Petitioner has supported its conclusion by a preponderance of the evidence.

Consequently, on the record before us, we cannot find that Petitioner has supplied the factual evidence necessary to establish the alleged violation of the Scope Rule. We shall therefore dismiss 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 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 no Agreement violation was shown.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.