

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19495
Docket Number SG-18547

Thomas L. Hayes, 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 that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when on June 27 and 28, 1968, it used other than signal employes (six-man line gang) to install seven hundred feet (700 ft.) of cable to replace a section of pole line at Geisingers Crossing between Allentown and Bethlehem, Pa.

(b) Carrier be required now to allow two days' pay each for:

Signal Foreman Donald Robbins
Signalmen John Schmidinger, James Lightcap, James Bennett
and George Fech
Signal Helper Harry Markow, Jr.

OPINION OF BOARD: On June 27 and 28, 1968 at Geisingers Crossing between Allentown and Bethlehem, Pennsylvania Carrier assigned Communication Linemen (employes not covered by the Signalmen's Agreement) to replace a section of pole line carrying both telephone communication wires and signal control wires. The pole line in question has four telephone wires and eight or ten signal wires on it.

The Organization contends that Carrier violated the Scope Rule of the Signalmen's Agreement and the claim before us was filed on behalf of members of the Allentown Signal Construction Gang.

The pertinent Scope Rule reads as follows:

"This agreement covers rates of pay, hours of service and working conditions of all employes 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 employes 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 employes of the signal department performing the work described under the heading 'Scope'."

We note that the above Scope Rule covers the "...construction, installation, inspecting, testing, maintenance and repair of signals, interlocking plants ... and their appurtenances". The Rule further provides that 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."

The Organization submits that the Scope Rule is controlling here in that several of the wires in the cable were "appurtenances" to the "signals", i.e. were the actual controls for the signals. In this contention we concur.

Moreover, it is interesting to note that when the signal cable involve in this dispute was later extended Carrier assigned the signal construction gang with communication employes to make the extension.

Carrier points out that this was the first such occasion of record where a single cable was used for both signal and communication circuits and Carrier contends that in the past Line Department employees have installed separate cables to replace signal and communication sections of pole lines. In addition, Carrier argues that Claimant's were not available to perform the disputed work because they were performing their regular assignments when the disputed work was done.

After a review of the pertinent Scope Rule, the Board is convinced that the Rule is clear and unambiguous and reserves the contested work to Signalmen. Even if Carrier's allegations with respect to past practice are true, in whole or in part, such practice would not prevail over the clear language of the applicable Scope Rule. Past practice is of great importance where the Agreement itself is ambiguous but that is not the case here.

Carrier's argument that the Claimants were not available to perform the subject work because they were working their own assigned positions is not a sufficient basis to deny compensation to Claimants. Carrier failed to show that Claimants could not have performed the contested work in overtime hours or on week-ends. Thus, in the light of prior awards, we conclude that Claimants must be compensated for their loss of additional work opportunities.

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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 violated.

A W A R D

Claims sustained.

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.