

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19654
Docket Number SG-19393

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company that:

Claim No. 1:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Scope and historical practice, when, on July 28 and August 13, 1969, employees other than Signalmen were used to instruct and qualify new Operator in regard to operation of Interlocking Plant at Argos.

(b) Carrier pay to Signal Maintainer M. E. Neff and Signal Helper Elmer Howard five (5) additional hours' overtime each, for each date, July 28 and August 13, 1969, as a consequence of the violation.

Claim No. 2:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Scope and historical practice, when, on August 11 and 17, 1969, employees other than Signalmen were used to instruct and qualify new Operator in regard to operation of Interlocking Plant at Runnion Avenue.

(b) Carrier pay to Signal Maintainer G. M. Harshbarger four (4) additional hours' overtime for each date, August 11 and 17, 1969, as a consequence of the violation.

Claim No. 3:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Scope and historical practice, when, on June 16, July 11, 13, and 19, 1969, employees other than Signalmen were used to instruct and qualify new Operators in regard to operation of Interlocking Plants at Cummings Draw Bridge, Calumet Telegraph Office, and 95th Street.

(b) Carrier pay to Signal Maintainer G. M. Harshbarger eight (8) additional hours' overtime for each date, June 16, July 11, 13, and 19, 1969, as a consequence of the violation.

Claim No. 4:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Scope and historical practice, when, on April 17, 1970, employees other than Signalmen were used to instruct and qualify new Operator in regard to operation of Interlocking Plant at Argos.

(b) Carrier pay to Signal Maintainer M. E. Neff and Signal Helper Elmer Howard five (5) additional hours' overtime each on April 17, 1970, as a consequence of the violation.

Claim No. 5:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Scope and historical practice, when, on August 10 and 27, and on or about September 2, 1969, employees other than Signalmen were used to instruct and qualify new Operators in regard to the operation of Interlocking Plants at Cummings Draw Bridge and Calumet Telegraph Office.

(b) Carrier pay to Signal Maintainer G. M. Harshbarger eight (8) additional hours' overtime for each date, August 10 and 27, and on or about September 2, 1969, as a consequence of the violation.

OPINION OF BOARD: This claim arises under a general scope rule contained in Agreement between the parties effective March 1, 1952, as amended. Third party notice has been given to the TC Division of BRAC; however, the TC Division has not filed a submission in the case.

We shall first dispose of two procedural issues. Carrier contends claim #3 should be dismissed because of the lack of proper identification of claimant. Carrier employs two signal maintainers named Harshbarger with the initials of "G.M." (the proper claimant) and "G.F.". Though these initials were interchanged on the property, the matter has been corrected in Petitioner's submission. There is no showing of prejudice to Carrier from the interchange of initials, so we find no merit in this contention. Second, Petitioner contends the Carrier failed to take action on claim #3 within the time prescribed by applicable time limits and that this claim must be allowed on that basis alone. The record validates this contention and we shall therefore sustain claim #3.

The basis of the remainder of the claims, #1, 2, 4, and 5, is that Signal Employees are entitled to qualify new operators in connection with the operation of certain interlocking plants. In support thereof the Petitioner has submitted evidence to show that since December 5, 1941 Signal Employees have been used to qualify new operators at Argos, Runnion Avenue, and Cummings Drawbridge, Calumet Telegraph Office and 95th Street. Carrier has submitted an Agreement between Carrier and the Order of Railroad Telegraphers dated February 9, 1962,

which covers the disputed work, along with evidence that the disputed work has been performed by employees other than Signal Employees at Muncie, Indiana, Frankfort, Indiana, and Cleveland, Ohio. Carrier's evidence also raises a factual issue concerning the signalmen's performance of the disputed work at Cummings Drawbridge, Calumet Telegraph Office and 95th Street.

Petitioner seeks to prevail under a general scope rule and contends that its evidence meets the "system exclusivity" criteria applicable thereto. Petitioner further contends that, because signalmen performed the disputed work for more than twenty (20) years prior to the Carrier's agreement with the Telegraphers, a prior practice existed which was not changed by the agreement with the Telegraphers.

Our study of the whole record shows that the Petitioner has not met its burden of proving by a preponderance of the evidence that the disputed work has been historically and exclusively performed by the complaining employees on a system-wide basis. Award 19506 (O'Brien). While the Petitioner's evidence was sufficient to shift to Carrier the burden of coming forward with evidence to refute Petitioner's evidence, the Carrier effectively met this burden by adducing evidence which disproved Petitioner's contention of system-wide exclusive performance of the disputed work by signalmen, and which, in addition, showed that the disputed work was covered by a written agreement with the Order of Railroad Telegraphers dated February 2, 1962.

For the foregoing reasons we shall sustain claim #3 and dismiss claims #1, 2, 4, and 5.

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

The Agreement was violated in respect to time limits applicable to claim #3, but was not violated in respect of the scope rule.

A W A R D

Claim #3 sustained. Claims #1, 2, 4, and 5 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.