

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20040
Docket Number SG-19532

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Region of the Norfolk and Western Railway Company (former Wabash Railroad Company) that:

(a) Carrier violated the Signalmen's Agreement, particularly the Scope and historical practice, when, on February 28, 1970, (a rest day for shop employees) persons not regularly assigned to the Signal Shop at Decatur, Illinois; i.e., Assistant Supervisor accompanied Signal Maintainer Beckham, entered the shop and obtained signal material from therein.

(b) Carrier should now pay to Signalman O. B. Little, who is regularly assigned to the Signal Shop, 2.67 hours at his overtime rate as a consequence of the violation.

OPINION OF BOARD: On Claimant's rest day, an Assistant Signal Supervisor unlocked Carrier's Signal Shop to permit a Signal Maintainer to procure certain material. Petitioner contends that said act constituted a violation of the Scope Rule of the Agreement - relying upon historical practice on the property.

Carrier denies a violation, stating that Petitioner has not demonstrated an exclusive historical practice.

We concur with the position of the Carrier.

A reading of the Scope Rule itself does not compel us to conclude that the unlocking of a door on one of Carrier's facilities is a violative act. Further, the record fails to show that any other "work" was performed. Under this Scope Rule (which does not reserve the disputed work to any one employee or group of employees), in order to find a violation, we require a showing, by means of history or custom, of an enforceable practice. The only evidence suggesting such a practice was apparently never presented to Carrier while the matter was being handled on the property and (in accordance with numerous Awards of this Division) is not now properly before us for consideration.

The Organization has failed to meet its burden of proving its claim by a substantive preponderance of the evidence and we must therefore dismiss it.

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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 claim should be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.