NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20162
Docket Number SG-19882

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Illinois Central Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad that:

(a) Carrier violated the Signalmen's Agreement, particularly the Scope, when, commencing February 9, 1971, it assigned employes other than signal employes to perform work in connection with installation of Hot Box Detectors at Mile Post 103, Horton, Kentucky; Mile Post 50, Stephensburg, Kentucky; and Mile Post 190, Fairview, Kentucky.

(b) Carrier should pay to employes of Signal Gang 309, namely: Foreman J. D. Audas; Leading Signalman J. H. Oates; Signalman C. W. Krosp; and Assistant Signalmen L. M. Benson, W. R. Layne, and M. H. Merrick, each, additional time equal to 9-4/12 hours at their respective time and one-half rates for each date--February 9, 11, and 17, 1971. Carrier should also pay to the named Claimants and any other signal employes whose assignments to Gang 309 are concurrent with the violation additional time equal to the number of man-hours that employes other than signal employes are used on dates following February 17, 1971, on the projects referred to in part (a) above.

/Carrier's File: 135-137-172; Case No. 270 Sig./

OPINION OF BOARD: The August 1, 1958 Agreement contains a Scope Rule which describes certain work, and includes:

"..all other work generally recognized as signal work."

Hot Box Detectors were first utilized by Carrier in 1961. Ten years later, the Organization instituted this claim when employees not covered by the agreement installed such devices.

Carrier raises a number of defenses to the claim. Initially, it states that because Hot Box Detector Devices were not in existence (on this property) when the Scope Rule became effective, the work is "new work" and is not included within the Scope Rule, citing Award 19694 (Ritter), among others.

Secondly, Carrier insists that this Board may consider only the record of this case, and may not explore so-called "industry practice" regarding assignment of similar work.

Finally, Carrier urges that in order to sustain the claim, Claimant must prove, by tradition, custom and practice, that the work is reserved exclusively to Signal Department Employees on a system-wide basis.

Claimants urge that past practice does not control when the provisions of an agreement are clear and unambiguous, citing Awards 14599 (Ives), and 13994 (Dolnick) and others.

We do not find that the agreement before us contains the clear mandate which Claimant suggests. To the contrary, we are unable to discover any language in the Scope Rule which clearly reserves the right to install Hot Box Detectors to Signal Employees. That factor was apparently recognized during the handling on the property because on at least three (3) occasions the Organization based its claim on a violation of Paragraph (g) of the Scope Rule, i.e., "All other work generally recognized as signal work."

In Second Division Award 5740 (Dorsey) (relied upon by Claimants), the Referee noted:

> "It is firmly established in the case law of this Board that where a Scope Rule of an agreement is general in nature an organization claiming the right to work under the Rule must prove that historically, customarily and traditionally the work has been exclusively performed by employees covered by the agreement on the particular property. The clause 'any other system or method used for communication purposes'... is general in nature...."

This Board has consistently held that "generally recognized" Rules are general in nature. See, for example, Awards 11526 (Dolnick) 11595 (Stark), 14944 (Ives), 19417 (Devine) and 19604 (Ritter). Recently, Award 19692 (Ritter) considered Signal Rule language identical to that present in this docket. The Award required, in order to establish exclusive rights to the work, proof of past practice, on a system-wide basis, to the exclusion of all other crafts.

In the initial claim the Organization asserted that it is recognized, <u>in the industry</u> that the installation and maintenance of Hot Box Detector Systems is work which accrues to Signalmen. In reply, Carrier advised that the work in question has been performed by many crafts on the property. Carrier concluded by stating: "Absent evidence showing that this work is exclusively reserved to Signalmen by the Scope

Rule of the agreement or exclusive past practice, the claim has no basis." In the further handling on the property, the Organization conceded that it had never filed a claim for the described work (although it always contended that the work was Signalmen's), and reiterated its claim that "the industry" recognized the validity of the claim.

We concur with Carrier that the issue of so-called "industry practice" is not material to our determination. To prevail, Claimant must show a violation of its Scope Rule on this particular property. See Second Division Award 5740 (Dorsey) and Public Law Board No. 516, Award No. 8 (Seidenberg).

We have noted above the quantum and nature of proof necessary to sustain a claim under a general Scope Rule. The record fails to satisfy the requirements and accordingly, we will dismiss the claim for failure of proof.

We are not unmindful that certain Awards, concerning other Carriers, have sustained and denied Signalmen's rights to perform Hot Box Detector and thermo scanner gate unit work. See Second Division Awards 5740 (Dorsey), Third Division Awards 19692 (Ritter) and Public Law Board No. 516, Award No. 8 (Seidenberg). But, this Award is limited to this Carrier, this Agreement, this record, and the burden of proof. We do not attempt to expand our Award to parties not before us.

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 Employes involved in this dispute are respectively Carrier and Employes 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 is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.