

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20465  
Docket Number SG-20360

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(The Atchison, Topeka and Santa Fe Railway Company  
( - Coast Lines -

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violates the Scope and Article 1 of the Signalmen's Agreement by farming out work generally recognized as signal work, to the LeRoy Rahder Construction Company. The carrier failed to properly apply the provisions of the Agreement when they allowed the building of dirt fills between San Bernardino and Barstow, First District, Los Angeles Division, to be farmed out instead of properly assigning the work to signal employees. The said work commenced on or about February 15, 1972, and is in progress as of the date of this writing.

(b) Claim of the Brotherhood of Railroad Signalmen in behalf of Signalmen R. C. Davis and C. L. Cary, for eight (8) hours per day, at their pro rata rate, for each day outside contractors engaged in the building of the said fills, from the time the work commenced to March 16, 1972.

(c) Claim of the Brotherhood of Railroad Signalmen in behalf of Signalmen R. C. Davis and W. C. Messer for eight (8) hours per day for each day the building of the dirt fills is continued by outside party, until either work is properly assigned or work is completed; claim period beginning March 16, 1972.

(d) Claim of the Brotherhood of Railroad Signalmen in behalf of Signal Foreman C. L. Woodruffe for one (1) days pay for each day the building of the fills was in progress and accomplished by outside parties, under the direction of the Engineering Department; claim period beginning with the commencement date of the work, and continuous until either properly assigned to signal employees or work is completed. [Carrier's File 132-57-28/

OPINION OF BOARD: On or about February 15, 1972 an outside contractor, LeRoy Rahder Construction Company, commenced construction of dirt fills upon which signal equipment was to be placed, on Carrier's Los Angeles Division. Subsequently, on March 16, 1972 the instant claim was filed wherein the Organization, Petitioner herein, alleged a violation of the Signalman's Agreement. The claim was denied by Carrier, appealed by Petitioner and comes to us now for resolution.

The basic contentions of Petitioner are that the work in question, construction of dirt fills for signal equipment, is reserved to Signalmen by practice and tradition as well as by the express language of the Scope Rule of the Agreement. Carrier, on the other hand urges that neither the language of the Agreement nor exclusive practice can be found to support such reservation to the Signalmen.

Petitioner maintains that the "appurtenances and appliances" clause of their Scope Rule reserves unto Signalmen the work here in issue. Upon analysis of the Agreement language and prior Awards of this Division we are constrained to disagree. We are unable to find a sufficient nexus to warrant placing dirt fills within the contractual category of appurtenances and appliances. See Awards 17061, 19450, 19451, and 20336.

Finally, Petitioner asserts that some 25 years of practice supports its argument that building dirt fills historically and traditionally belongs to signalmen. In this connection, it should be noted that the Brotherhood of Maintenance of Way Employees is an interested party in this case inasmuch as that Organization has claimed entitlement to the work in question.

Careful review of the record herein indicates that the work of constructing dirt fills has been performed on some occasions by signal forces, on others by Maintenance of Way forces and also by outside contractors. In the face of this uncontroverted evidence the exclusivity necessary to support Petitioner's claim of reservation of work by custom and practice cannot be found herein.

On the basis of the foregoing, we conclude that the Scope Rule does not expressly assign the work in question to Signal forces nor has there been proven by custom practice and tradition an exclusive reservation of the work to Signal Department employes. Therefore, consistent with well established precedent we must deny 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.