

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20528
Docket Number SG-20202

Irwin M. Lieberman, 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) The Carrier violated the current Signalmen's Agreement, particularly the Scope, when it used employes not covered by the Signalmen's Agreement to install and maintain switching signals at West Avenue, Portsmouth, Ohio.

1. On April 6, 1971, two electricians installed a red switching signal at West Avenue on the switch tender shanty at Portsmouth, Ohio.

2. On April 21, 1971, two electricians installed a yellow switching signal at West Avenue on the switch tender shanty at Portsmouth, Ohio.

3. On May 12, 1971, two electricians were called to replace lamp in yellow switching signal at West Avenue on the switch tender shanty at Portsmouth, Ohio.

(b) The Carrier now pay Leading Signal Maintainer Nelson Bellar and Signal Maintainer R. P. McCorkle eighteen and seven-tenths (18.7) hours each at their overtime rates of pay for the violations cited in part (a).

Claim No. 2

(a) The Carrier violated the current Signalmen's Agreement particularly the Scope and Rule 8(1), when it used an employe not covered by the Signalmen's Agreement to replace a signal lamp in the switching signals at West Avenue, Portsmouth, Ohio, on Saturday, August 28, 1971.

(b) The Carrier now pay Signal Maintainer Nelson Bellar two and seven-tenths (2.7) hours at his overtime rate of pay for the violation cited in part (a).

Claim No. 3

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope and Rule 8(1), when it used an employee not covered by the Signalmen's Agreement to replace a signal lamp in the switching signals at West Avenue, Portsmouth, Ohio, on Friday, October 15, 1971.

(b) The Carrier now pay Signal Maintainer Nelson Bellar two and seven-tenths (2.7) hours at his overtime rate of pay for the violation cited in part (a).

OPINION OF BOARD: The Claims herein concern the installation of indicator lights on a switchtender's shanty and the replacement of bulbs in these lights subsequently. Petitioner alleges that the use of electricians rather than signal employees to accomplish this work was in violation of the Agreement; the Electrical Workers Union and the Carrier disagree.

The Petitioner contends that the disputed work falls within the scope of the Agreement and further by custom, tradition and practice has been performed by Signalmen on this property. The Scope Rule of this agreement may be characterized as general in nature and the Organization relies on the phrase "generally recognized as signal work" as applicable to the disputed work. Petitioner also relies on Award 19058 to support its position; we note that this Carrier was not a party to that dispute and we do not consider it to be controlling in this dispute.

For the Organization to prevail in its contention that the work involved herein was improperly performed by employees not covered by the Agreement, it must be clearly established that the work has been by tradition and custom performed exclusively on a system wide basis by covered employees. This position has been enunciated by the Board, in relation to general scope rules, repeatedly over the last decade; see for example Awards 12787, 17007, 19923, and 20179.

Petitioner repeatedly argues that the work in question has always been performed by Signal employees; in its submission Petitioner states: "We have also for many years installed and maintained indicator lights inside and outside of stations and other structures....". However a search of the record reveals absolutely no evidence in support of the well stated arguments. The Board has held repeatedly that the Organization has the burden of proof in disputes such as this involving exclusivity. The Petitioner in this case has not met the requisite burden of proof. In view of the foregoing, we must deny the claims.

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 Petitioner has failed to meet its burden of proof.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1974.