

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20532
Docket Number SG-20219

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (Gulf District):

Claim No. 1

On behalf of the following named members of Signal Gang 291, for an additional payment of three(3) hours each at time and one-half their respective straight time hourly rates, account work of their assignments was denied them when the Carrier contracted with an outside party to construct and install a Meter Loop at FM 2004, Lake Jackson, Texas, on October 20, 1971, in violation of the Scope of the Signalmen's Agreement.

J. G. Freeman	Foreman	\$922.70 per month
J. H. Love	Assistant	3.56 per hour
J. T. Harrell	Assistant	3.53 per hour
J. L. West	Assistant	3.49 per hour

/Carrier's File: B 315-46 General Chairman's File: M2067

Claim No. 2

On behalf of the following named members of Signal Gang 291, for an additional payment of three (3) hours' straight time each, account work of their assignments was denied them when the Carrier contracted with an outside party to construct and install a Meter Loop at Highway 1495, Freeport, Texas, on October 4, 1971, in violation of the Scope of the Signalmen's Agreement.

J. G. Freeman	Foreman	\$922.70 per month
J. H. Love	Assistant	3.56 per hour
J. T. Harrell	Assistant	3.53 per hour

/Carrier's File: B 315-47 General Chairman's File: M2067

OPINION OF BOARD: On two occasions, Carrier utilized its electricians (rather than signal employees) to install meter loops, which were to be utilized in connection with highway protection devices.

Claimants urge a violation of its Scope Rule which provides, in material part:

"This Agreement governs....working conditions....of employees in the Signal Department....performing signal work in the construction, installation....of highway crossing protection devices and their appurtenances... and all other work generally recognized as signal work..."

In reply to the initial claim, Carrier advised:

"The meter loop....was installed by the Railroad Company's Electrical Workers. The work consisted of installing the meter base, meter, conduit and wiring, all on a separate creosoted pole for electrical service furnished by a utility power company. The entrance cable from the meter loop creosoted pole to the signal instrument case to serve the flashing light signals was made by members of Signal gang 291."

During the handling of the matter (on the property) Claimant failed to dispute the above cited statement. Accordingly, the Board must accept same as established for purposes of this record.

On the property, the Organization contended that its employees had installed meter loops. Carrier concedes that meter loops have been installed by signal employees under certain circumstances, but insists that meter loops have also been installed by Carrier's electricians and by outside contractors. Thus, Carrier urges that Claimant has failed to demonstrate an exclusivity of assignments.

The International Brotherhood of Electrical Workers participated as a Third Party and filed a Submission. The IBEW states that it has performed meter loop installation on the property, and urges that the Carrier's assignment in this dispute was proper, noting that its Scope Rule refers to installation of meters.

The Organization conceded that electricians may have constructed and installed meter loops for signal installations. But, such work, if performed, was not known to the Organization.

The Claimants asserts that the Scope Rule refers specifically to installation of highway crossing protection devices and their appurtenances, and because the meter loops were related to said protection devices, past practice is not controlling. See Award 12697 (Hamilton). In the alternative, the Organization notes that its Scope Rule also covers "...all other work generally recognized as signal work...."

Claimant relies on Awards 19525 and 19526 (Brent) dealing with installation of meter loops. But in those cases, the Board stressed that there had been a unilateral change of management policy in regard to assignment of the disputed work.

Carrier cites Awards 19040 (Woody) and 19838 (Blackwell). Award 19040 considered the setting of a pole upon which a meter loop was attached. The Award noted that:

"While it is correct, as Signalmen argue, that the purpose of the pole and meter loop together was to service a crossing signal within their work jurisdiction, the pole appurtened to the crossing signal only through the meter loop, and the meter loop appears to be conceded to be a work jurisdiction not exclusively reserved for Signalmen."

Award 19838 considered meter loops installed by electricians and a signal Scope Rule which covered highway crossings and their appurtenances. The Award denied the claim based upon Public Law Board Awards, on the property, which had rejected assertions similar to those raised here.

In the final analysis, this dispute must be determined by the record established on the property. With the exception of the continuing dispute concerning the historical performance of the work of installing meter loops, we note that the record, established on the property, fails to aid the Board substantially in a resolution of the dispute.

Claimant's position that past practice does not control a specific Scope Rule is, of course, well taken, but the Board requires proof that the Carrier's action violates the specific provision. Prior Awards, cited above, have failed to hold that installation of meter loops of the nature described herein, are, of necessity, directly related to highway crossing protection. We do not preclude the Organization from making such a showing in a future case, but we do not find such a demonstration under this record. Further, we are unable to find that the Organization has established exclusivity of assignment. The burden of so establishing rests with Claimant. See Award 18883 (Cull).

We fully recognize the plausibility of the Organization's arguments that the disputed work may be specifically covered by the Scope Rule, but we find a failure of proof under this record. We will dismiss the claim for said failure of proof.

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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauler
Executive Secretary

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