NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21008
Docket Number SG-21153

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Galveston, Houston and Henderson Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Galveston, Houston and Henderson Railroad Company:

On behalf of the following named members of Missouri Pacific Signal Gang 1412, Houston, Texas, for 96 hours each at time and one-half their respective straight time hourly rates, covering the period April 15 through June 10, 1974; and, effective June 11, 1974 and continuing until the violation is discontinued, they be paid the number of hours worked by the Bridge Gang (painting signal equipment), the hours to be divided equally among the following claimants, or their successors, and paid at their respective time and one-half rates.

Employee	Position	S.T. Rate
C. L. Kemp	Foreman	1233.84 per mo.
J. L. Clark	Signalman	5.74 per hr.
A. F. Newman	"	5.74 " "
B. J. Perry	Asst. Signalman	4.79 " "
R. W. Burkett	" "	4.76 " "
J. R. Branson	" "	4.76 " "

/Carrier's file: 29 SG 1/

OPINION OF BOARD: This is a scope claim in which the Signalmen allege that the Carrier, Galveston, Houston and Henderson Railroad Company, has permitted its Bridge and Building forces (B & B) to perform work which belongs to employes of the Signalmen's Organization. The disputed work is the work of scraping, priming, and painting signal equipment on the GH&H. The claim covers the period April 15 through June 10, 1974 and continuing until the alleged violation ceases, and is based on the Missouri Pacific Signalmen's Agreement which the parties adopted on the GH&H effective March 1, 1972.

The Employes assert that when the Carrier agreed to adopt the Missouri Pacific Signalmen's Agreement in March 1972, it assumed an obligation to apply that Agreement as it had been applied on the Missouri Pacific; and that under prevailing practice on the Missouri Pacific, the Signalmen had performed the disputed work. From these premises the Employes advance as their basic contention that the "work of scraping, priming and painting signal equipment is work reserved exclusively to signal employes under the Scope Rule of the Missouri Pacific Signalmen's Agreement." The Employes also assert that the disputed work is specifically covered by the term "maintenance" which appears in the Signalmen's Scope Rule. In denying the claim, the Carrier, inter alia,

asserted that the B&B forces have historically performed the disputed work on the GH&H without protest by the Signalmen and that this practice was not changed by the adoption of the Missouri Pacific Agreement in March 1972.

The record shows that the GH&H is an independently operated railroad, operating over about 49 miles of track between Galveston and Houston, Texas, and that practically all of its stock has been owned since 1895 by the Missouri Pacific Railroad and the Missouri-Kansas-Texas Railroad Company in 50-50 proportions. The record also shows beyond question that the practice on the GH&H has been for the B&B forces to perform the disputed work and that no signal employe of the GH&H has ever performed such work on this property.

The ownership of the GH&H by other Carriers does not alter the status of the GH&H as an independent Carrier in the events which led to this dispute. Thus, when the parties agreed to adopt the Missouri Pacific Agreement as the controlling Agreement on the GH&H property, the parties entered into a new agreement concerning the GH&H property in and of itself. So, even though the parties used the text of the pre-existing Missouri Pacific Agreement to effect a separate Agreement respecting the GH&H, the parties did not agree to extend the Missouri Pacific Agreement, itself, to the GH&H. In these circumstances it cannot be said that the prevailing practice under and the application of the Missouri Pacific Agreement on that railroad automatically "poured-over" into the Agreement adopted in March 1972 for the GH&H property. Such a pour-over could only result by an express agreement of the parties, and the record contains no assertion or evidence that any agreement of this nature was made. Therefore, the Employes' contention that the claim is valid by reason of the prior practice and application of the Agreement on the Missouri Pacific Railroad cannot be accepted. Similarly, the record does not support the Employes' contention about the specificity of the Rule. While it may be true that the term "maintenance" would be sufficient to cover the disputed work if such work had actually been performed by Signalmen, the record shows beyond question that no signalman has ever performed the disputed work on the GH&H and indeed the record shows that B&B forces have always performed such work on the GH&H property. In light of this practice there is no basis for finding that the disputed work is exclusively reserved to the signalmen on this property, and accordingly the claim will be dismissed.

In view of the foregoing it has not been necessary to reach other issues discussed in the parties' Submission.

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 Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.