

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21132
Docket Number SG-20661

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) On or about September 5, 1972 the Carrier violated and continues to violate the current Signalmen's Agreement in effect on the Missouri Division of the Chicago North Western Transportation Company (formerly Chicago Great Western) in particular the Scope when it assigned and/or permitted employees of the clerical department who are not covered by the Scope Agreement, to type and fill ICC reports made by the Sig. Inspector.

(b) The Carrier now be required to compensate Mr. Pete Greco at the Inspectors rate of pay, in addition to what he has been paid, for all time consumed by the clerical forces in performing this work.

(c) The Carrier compensate Mr. Greco as shown under part (b) of this claim and continuing thereafter until this work is returned to the Inspector and the Carrier complies with the Agreement.
/Carrier's File: 79-30-19/

OPINION OF BOARD: This case presents the question of whether the Scope Rule of the Signalmen's Agreement was violated when clerical employees were assigned the work of finish typing ICC signal inspection reports. The record is unrefuted that for many years prior to August 1972 a Signalman at Oelwein, Iowa had performed certain ICC signal inspections and then typed the final report of said inspection in triplicate and sent a copy to various Signal Department functionaries. In September 1972 Carrier reorganized and consolidated supervisory personnel in Oelwein and created a common clerical pool. Since September 5, 1972 Carrier has directed the Signal Inspector to turn his rough draft or field copy of the ICC inspection form over to clerks for final typing rather than typing it himself. Since that date clerk/secretaries have been typing the reports for signature by the Signal Inspector. Under date of September 28, 1972 the Organization filed the instant continuing claim alleging that Carrier violated the Signalmen's Agreement when:

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"it assigned and/or permitted employees of the clerical department who are not covered by the Scope Agreement, to type and fill ICC reports made by the Signal Inspector."

The record shows that the claim was mishandled locally since it was not denied until December 4, 1972. Accordingly, by letter dated January 22, 1973 Carrier paid under the time limit rule, without prejudice to its position on the merits, that portion of the claim from September 5 - December 4, 1972. This partial payment on procedural grounds was accepted by the Organization on behalf of Claimant on January 30, 1973 but the Organization continued to press the continuing claim on the merits and because of alleged violation of Article V relative to specificity of Carrier's denial of the claim.

We have considered carefully the detailed record and the many Awards cited by the parties. The principles governing disposition of this claim have been well established therein. We find no merit in the Organization's contention that the time limit rule, Article V was violated by the following wording in the denial decision: "Your claim is not supported by any rule, and, therefore, is declined in its entirety." A myriad of Awards in which we find no palpable error, have upheld such a denial as sufficient and proper. See 11208, 11251, 11887, 12020, 12075, 15557, 16576, 16780 et al. We deal here with a general Scope Rule and the claim is premised upon that clause which reads: "... and all other work generally recognized as signal work." In the absence of an express reservation of the disputed work by the specific language of the Agreement, we require the employees to demonstrate such exclusive reservation by custom, practice and tradition of performance on a system-wide basis. See Awards 11526, 14284, 15813, 17061, 19822, 20157, 20532 et al. A natural corollary of this rule is that exclusive performance at one specific location, even if long standing, is ordinarily not sufficient to establish exclusive reservation by custom, practice or tradition because the Scope Rule under which such claim is made is system-wide. The only exception which we can contemplate to this principle is where the work in dispute is performed only at one location. Further, if such conditions obtain it is up to the Organization to prove same, consistent with its overall burden of persuasion on these Scope Rule claims. On the instant record we have nothing more than a showing that a Signal employee at one single location has performed some clerical or typing work for several years. There is no showing whether such ICC report preparation is done only at Oelwein, Iowa, or on Carrier's entire system and we must therefore presume that the latter is not the case.

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Petitioner has not carried its burden of proof of exclusive system-wide performance by Signalmen of final typing ICC signal inspection reports.

In the circumstances we must deny that portion of the claim which goes to dates subsequent to December 4, 1972. Inasmuch as the claim for September 5, 1972 - December 4, 1972 has already been paid on the property under the time limit rule, that portion is moot and must be dismissed.

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 dismissed in part and denied in part as described in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.

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H. G. HARPER

Dissent to Award No. 21132, Docket No. SG-20661

The Majority has seriously erred in Award No. 21132.

In holding that the Petitioner had failed to establish by a showing of an exclusive system-wide practice that the disputed work had been reserved to the Carrier's signal employees, the Majority manufactured a defense for the Carrier. The subject of exclusive system-wide practice was not considered on the property where it could and should have been raised by the Carrier if it were a proper defense. The Majority has thus failed to abide by our rule barring new issues.

Inasmuch as the Majority has so erred, surely it will not object to the Dissenter's observation that, for Signalmen's Agreement purposes, the Respondent Carrier is comprised of three separate and distinct systems of railroad. The system before the Board in the instant dispute was the former Chicago Great Western. The Dissenter is advised that the position in question was and is the only one of its kind on that system.

Hence, the reason for our rule barring new issues is apparent; the practice was indeed system-wide. The Majority's Award is in error and the Petitioner should continue to pursue his position.



W. W. Altus, Jr.
Labor Member