

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21410  
Docket Number SG-21361

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Robert W. Blanchette, Richard C. Bond and  
( John H. McArthur, Trustees of the Property of  
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo):

System Docket W-57  
Southern Region - Southwest Division Case S-3-74

Carrier violated the Scope of the current working agreement when, Communication Department employees Linemen H. M. Faulk and C. E. Dudley were required upon specific instruction by Supervisor C&S H. D. Perry to assist Leading Signal Maintainer M. W. McNeese in locating and clearing ground affecting the Signal Code Line between CP153 and Illinois St. Rt. 128 on March 8, 1974.

Carrier now be required to compensate Leading Signal Maintainer L. C. McKee and Signal Maintainer D. L. Price eight (8) hours pay at the overtime rate for date of March 8, 1974 account violation of the current working Agreement referred to in (a) above.

OPINION OF BOARD: The code line involved in this dispute is located on a pole which also contains telephone circuits. The code line is maintained by Signal Department forces and the telephone circuits are maintained by employees represented by the International Brotherhood of Electrical Workers. On March 8, 1974, due to a problem with the signal line, a supervisor was dispatched, accompanied by a Signal Maintainer and two Linemen (I.B.E.W. represented). They were instructed to search for possible line damage and or brush problems at the joint pole line. The two Linemen were used to cut brush from under the joint pole line and the Maintainer was used to perform all work relating to repairing the code line. The total time consumed for all of the work, according to Carrier, was four hours. Claimants, both from the Signal forces, worked their normal tour of duty on the day in question.

The sole issue in this dispute is whether the removal of brush causing signal problems, from under a joint pole line, is a type of work accruing exclusively to Signalmen under their Scope Rule. An examination of the Scope Rule indicates that it describes quite specifically the work to be performed by Signal employees; it does not, however, mention the work of removing brush from under a pole line. The only language in the Scope

Rule which could possibly relate to the work in question is that provision "...other work generally recognized as signal work." Petitioner has not attempted to show that this work, cutting brush, is, by practice, the exclusive work of the Signal forces.

The principal argument of Petitioner is that since the brush was the cause of a signal problem, its removal is covered by the contract and should have been performed by Signalmen. The IBEW argues that its employees customarily cut brush under such poles and the Signalmen have not established any right to the work; hence, the Claim should be denied. Carrier states that the cutting of brush on the property has been done by several crafts as well as outside contractors. Carrier argues that the cutting of brush is not generally recognized as signal work and no evidence of exclusivity has been presented by Petitioner.

This dispute presents a classic jurisdictional problem in which there is some merit to both positions. However, we must examine a number of factors in drawing the fine line requisite to its resolution. Although it is true that the brush was the cause of a signal problem it may be equated with many other situations in which there are signal problems created by factors which are not part physically of the signal system. It is quite clear that the Agreement, in its Scope Rule, does not make finite distinctions and the cutting of brush is only very remotely connected with signal work. Furthermore the linemen, in cutting the brush, were also engaged in, at least, preventative maintenance work insofar as the communications lines were concerned. In this dispute, the Carrier commendably assigned personnel from both crafts to the group assigned to clear the trouble and it should not be penalized for this action. Since the Linemen performed no functions directly on the signal equipment and the brush cutting cannot be said to accrue exclusively to signal forces, we can find no violation of the Agreement. Under all the circumstances of the work on this joint pole, and for the reasons indicated, the Claim must be denied.

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

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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. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1977.

Dissent to Award 21410, Docket SG-21361

The Majority in Award 21410 is in error.

By the Carrier's own Statement of Facts there was -

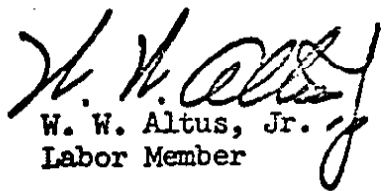
"\*\*\* code line trouble in the open line wire between Terre Haute and St. Louis. This code line is maintained by Signal Department forces \*\*\*.

\* \* \*

"On March 8th \*\*\* Linemen H. M. Faulk and C. E. Dudley were instructed to accompany Assistant Supervisor Christy and Leading Signal Maintainer, M. W. McNeese, to search for possible line damage or brush problems \*\*\* which was the source of the code line trouble. \*\*\*"

Hence, it is clear from the Carrier's own Statement of Facts that the Linemen were used to perform Signalman's work. If any preventive maintenance to the communication lines resulted, it was coincidental.

Award 21410 is in error and I dissent.

  
W. W. Altus, Jr.  
Labor Member