

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22292  
Docket Number SG-22002

James F. Searce, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ The Atchison, Topeka and Santa Fe  
{ Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

(A) Carrier violated the Signalmen's Agreement, particularly the Scope, when on September 29, 1974 Carrier officer R. Dillon performed recognized signal work when he loaded signal material into Company vehicle and transported same to Lariat, Texas for immediate use.

(B) Carrier should pay to TCS Signal Maintainer H. W. Bingham, Lubbock, Texas, additional time equal to four (4) hours overtime because of loss of work opportunity as a consequence of the violation."

[General Chairman file: 064. Carrier file: 14-1940-220-5]

OPINION OF BOARD: The present Petitioner complains of the act of the Carrier's Assistant Signal Supervisor involving his delivering a signal relay to a Signal Maintainer actively engaged in making repairs to vandalized signals. The relay was immediately used by the Maintainer in accomplishing the repairs. It is alleged that the use of the Supervisor violated the Scope Rule of the parties' Agreement.

The Petitioner contends that the act of transporting material to a work site for immediate use is work contemplated to be under the coverage of the Scope Rule of the parties' Agreement and thereby reserved to the Carrier's Signal Department employees. Supportive logic and awards are cited.

The Carrier denied the claim on the basis that the work was not covered by the Scope Rule. Carrier further asserted that it has been the practice that "transporting of material", per se, was not the exclusive right of the Petitioner on this property.

The argument of both parties finds support in the contract terms and the precedent cited. The resolution of the dispute must therefore turn on proof of position. The burden to present such proof is the Petitioner's. In this case the conduct of the parties is the determining issue. The Carrier's defense on this point was only lightly challenged by Petitioner in handling on the property and no support of Petitioner's contrary position is presented. Inasmuch as Petitioner has failed to meet its burden in this case, it is unnecessary that we proceed any further.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1979.

