

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22418
Docket Number SG-22394

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Illinois Central Gulf
Railroad:

On behalf of all employees assigned to Signal Gang 802 --
Foreman D. J. Hoyle; Signalmen B. J. Woosley, G. L. Grammer; Assistant
Signalman S. A. Lipe -- for 32 hours at the pro rata rate of pay
divided equally among them account the Company not using claimant to
perform steel beading at Lake Creek, Illinois, on October 20 and 21,
1976. Two maintenance of way employees were used instead."

Carrier file: 135-137-125 Spl. Case No. 317 Sig.

OPINION OF BOARD: Before proceeding to a substantive discussion of
the merits, we are compelled to review the
assertions raised by Carrier in its rebuttal brief that the General
Chairman's May 26, 1977 letter to the Manager of Labor Relations
was not received, considered or answered on the property. We will
eschew detailing the relevancy and significance of Circular Rule 1
since the parties are well aware of its meaning and intent and rule
that the document is inadmissible. We do not find any evidence in
the record that the new arguments and justification cited therein
were mentioned or discussed in the prior exchange of correspondence.

In the instant case, we are confronted with a claim that
the addition of the word "welding" to Section (e) of the Scope Rule
reserved whatever practice existed on this property respecting the
welding of a stainless steel bead on the top of the ball of the
rail. Petitioners argue that the Scope Rule specifically covers
welding in connection with maintaining any system or equipment and
that the track circuit is an integral part of the signal system.

It avers that its contention is consistent with the principle that the purpose for which work is performed determines to which class or craft the work belongs.

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Conversely, Carrier asserts that the process of steel beading on this property has been performed by the Maintenance of Way welders for more than fifteen (15) years and the Signalmen acquiesced to this work assignment. It argues that the word "welding" provided for in the Scope Rule only encompasses welding in connection with work generally recognized as signal work and that the contested work was never performed by signal employees.

Our careful review of the record convinces us that this work does not exclusively accrue to the petitioners by virtue of the incorporation of the word, welding, in Section (e).

The entire Scope Rule does, in fact, delineate assignment classifications that unmistakably belong to the Signalmen and certainly welding in relation to these work classifications and functions would be by definition included.

But we do not believe that the recent addition of this word was mutually designed to transfer work that was historically performed by the Maintenance of Way workers to this craft.

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The work was recognized for over a decade and a half as belonging to the Maintenance of Way forces and was not specifically included in the comprehensive Scope Rule work classification.

Inasmuch as we find merit and precedent to petitioners' argument that the purpose for which work is performed determines the craft, we do not find it applicable herein. It should have been challenged sooner than now since the purpose of beading steel was always the same. Adding the word "welding" in this context does not change it. Moreover, we cannot conclude either that this word covers work that is generally considered signal work, since the steel beading of rails with an electric arc was never construed as signal work.

This Board has long held as a matter of judicial consistency that where a general provision is cited as an affirmative assertion such as Sec. (g) to wit, "All other work generally recognized as signal work," the party making that statement has the burden of

proving that the disputed work is covered. We do not find that this proof test was sufficiently met.

Accordingly, we will deny the claim.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.