

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22673

Docket Number SG-22493

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (former Texas & Pacific Railway Company):

On behalf of the following named members of Signal Gang 1506, Addis, Louisiana, for the additional payments stated below, account required to suspend work of their assignments in the month of September 1976, to perform work of another Craft, maintenance of the right-of-way (Historically - Maintenance of Way employees' work), in violation of Scope Rule (a) and Rule 62 of the Texas and Pacific Signalmen's Agreement.

Claims

- 1 - B. K. Nichols, Signal Foreman, for 64 hours at his straight time hourly rate, \$1523.13 per month - (Sept. 10 - 5 hrs.; Sept. 13 - 3 hrs.; and 8 hours each day - Sept. 14, 15, 16, 17, 20, 21 and 22).
- 2 - C. R. Griswold, Signalman, for 52.5 hours at his straight time hourly rate, \$7.07 per hour - (Sept. 7 - 1.5 hrs.; Sept. 13 - 3 hrs.; and 8 hours each day - Sept. 14, 15, 16, 17, 21 and 22).
- 3 - A. Troquille, Assistant Signalman, for 64 hours at his straight time hourly rate, \$6.02 per hour - (Sept. 10 - 5 hrs.; Sept. 13 - 3 hrs. and 8 hours each day - Sept. 14, 15, 16, 17, 20, 21 and 22).
- 4 - G. Anzaldua, Assistant Signalman, for 65.5 hours at his straight time hourly rate, \$5.95 per hour - (Sept. 7 - 1.5 hrs.; Sept. 10 - 5 hrs.; Sept. 13 - 3 hrs.; and 8 hours each day - Sept. 14, 15, 16, 17, 20, 21 and 22).

- "5 - K. D. Corley, Assistant Signalman, for 43 hours at his straight time hourly rate, \$5.95 per hour - (Sept. 13 - 3 hrs.; and 8 hours each day - Sept. 16, 17, 20, 21 and 22).
- 6 - H. C. Guidry, Assistant Signalman, for 21 hours at his straight time hourly rate, \$5.95 per hour - (Sept. 10 - 5 hrs.; and, 8 hours each day - Sept. 14 and 15).
- 7 - S. D. Troquille, Assistant Signalman, for 64 hours at his straight time hourly rate, \$5.91 per hour - (Sept. 10 - 5 hrs.; Sept. 13 - 3 hrs.; and 8 hours each day - Sept. 14, 15, 16, 17, 20, 21 and 22).
- 8 - P. Robledo, Assistant Signalman, for 51 hours at his straight time hourly rate \$5.91 per hour - (Sept. 13 - 3 hrs.; and 8 hours each day - Sept. 14, 15, 16, 17, 21 and 22)."

/Carrier file: S 315-134/

OPINION OF BOARD: The issue in this case is one which has apparently remained unsettled over a series of claims. It addresses the obligation or authority for members of the "signal craft" to clear brush, vine, trees, etc. away from signal equipment and wires; if so, must such work be limited to "emergency circumstances" - where the integrity of such system is threatened by such brush, vines, trees, etc.; finally, is the performance of such work covered by the provisions of Rule 62:

"Except in extreme emergencies, employees covered by this agreement will not be expected to perform work of any other craft nor will employees of any other craft be required to perform work coming within the scope of this agreement. This does not apply to maintenance of electrical equipment on water pumps or to testing outside telephone during regular working hours."

Assuming a violation is demonstrated what, if any, monetary obligation issues to the Carrier where, as here, Claimants were under pay during the period involved. The claim demands punitive payment for all hours worked performing such work, on the basis that the Carrier required it to be performed out of the "Scope" of the work of the affected employees.

The record indicates a protracted history of a recurring dispute where, until a letter was executed by the Superintendent of Signals and Communications, December 22, 1969, the rationale of the Carrier would appear to have been supported by decisions of this Board that such work was incidental to the more important tasks performed by represented employees. Thereafter, three Awards - 20979, 20980 and 21568 - supported the Organization based principally upon the aforementioned 1969 letter by the Superintendent of Signals and Communication. (This document indicated, inter alia, that any request for signal maintainers to cut brush would be limited to emergencies only and, when done such employees would be compensated at time and one-half. This letter was "cancelled" by the same supervisor March 15, 1976.) The Organization asserts herein the controlling status of the 1969 letter - notwithstanding its having been disavowed - and also that the work complained of was not of an emergency nature, but was, instead, for "cosmetic purposes."

Without engaging the specifics of the issues dealt with in Awards 20979, 20980 and 21568, we find lack of a basis to affirm the Organization's claims. The terms of the Agreement, which control the relationship between the parties, represents not the extent of the Carrier's authority, but rather its limitations; consequently, the Organization must demonstrate a specific provision of the Agreement which delimits its authority relative to clearing brush and vines away from signal and communication systems. The scope Rule is general in nature and thus cannot be relied upon. Rule 62 speaks to the work of another craft and the Organization must demonstrate that the work performed, if not specifically precluded under its own Agreement, was properly reserved for another craft. Essentially, this is a divestiture case: the Organization asserts a lack of jurisdiction. There is no evidence that any other craft has raised the claim to such work and the record gives an indication that the clearing of such growth has at least some relationship to the integrity of equipment and systems installed and maintained by the Organization.

While we shall deny the Claim, we are obliged to point out that the Carrier has contributed to the confusion surrounding the case. We shall not address the question as to whether a supervisor - in this case the Superintendent of Signals and Communications - can effect a change in working conditions between the parties, although such action, which stood for seven years before purportedly being "rescinded", was the basis upon which the Organization bases its 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.