

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22705
Docket Number SG-22549

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood
of Railroad Signalmen on the Southern Pacific
Transportation Company:

Claim No. 1. General Chairman file: 22.083.
Carrier file: SIG 152-365

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated the Agreement, effective October 1, 1973, between the Company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen and particularly the Scope Rule and Rule 8(a).

(b) Mr. R. L. Martin be allowed payment at his overtime rate for two hours and forty minutes on the date of May 13, 1977, when Milepost markers were installed on Hot Box Detectors, the maintenance of which are assigned to Mr. Martin, by Assistant Division Engineer B. P. Budd.

Claim No. 2. General Chairman file: 22.083.
Carrier file: SIG 152-368.

(a) The Southern Pacific Transportation Company (Pacific Lines) has violated the Agreement, effective October 1, 1973, between the Company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen and particularly the Scope Rule and Rule 8(a).

(b) Mr. C. C. Betteridge be allowed payment at his overtime rate for two hours and forty minutes on the date of May 10, 1977, when Milepost markers were installed on Hot Box Detectors, the maintenance of which are assigned to Mr. Betteridge, by Assistant Division Engineer B. P. Budd."

OPINION OF BOARD: On May 10 and 13, 1977 Carrier's Assistant Division Engineer placed paper self-sticking identification/milepost markers on certain hot box detector housing structures. The Assistant Division Engineer is a Carrier official; he is not covered under the October 1, 1973 Signalmen's Agreement.

Claimants, as Signal Maintainers covered under the Agreement, were assigned to the maintenance of the above-mentioned hot box detectors. One was on duty on May 10 and the other on May 13, 1977. They filed separate claims, alleging that the Carrier violated the Scope Rule and Rule 8(a) of the Agreement.

The Scope Rule provides, in part, that:

"(a) This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article 1, engaged in construction, reconstruction, installation, maintenance, testing, inspecting, and repair of wayside signals, including ...hot box detectors...and all other work generally recognized as signal work performed in the field or signal shops."

Rule 8(a) provides that:

"SIGNAL MAINTAINER. An employee assigned to duties of maintaining signal equipment on an assigned maintenance territory, limits of which shall be designated by mile post location or other suitable identification, and to perform work generally recognized as signal work, as outlined in the Scope of this agreement."

The claims were handled as separate correspondence on the property. Since the subject matter of each is identical, they have been combined for presentation to this Board.

The Organization claims that placing an identifying mile-post marker on a hot box detector is part of the detector installation and, as such, comes under the scope of the Agreement. The Organization anchors its claim in the principle that "the purpose for which work is performed determines to which class or craft the work belongs." (Organization's emphasis).

At the outset, the Organization argues that there is no difference between a mile-post marker on a hot box detector and a number-plate on a signal. The Organization maintains that the numbers on the signals and the detectors both serve the purpose of identifying, for the signal maintainer, the location of a malfunction. The Organization notes that

"There has been no question over the years about the right of this carrier's signal forces to perform all work in connection with signal number plates -- they have always been considered part of the signal." The Organization thus argues that mile-post markers should be considered part of the hot box detector.

In order to further bolster the argument, the Organization sets forth the following rationale:

"There can be no dispute in the instant case that if it were not for the hot box detectors, there would be no need for the disputed work. Thus, the work was for the purpose of the hot box detector." (Organization's emphasis)

The Organization distinguishes the placement of mile markers directly on the hot box detector from the installation of the usual mile-post markers. The argument is made that signal work is classified by "systems" and that "the work involved herein is part of the hot box detector system."

In response to a Carrier assertion that "the work is not the exclusive work of signalmen" the Organization cites Third Division Awards 13938, 18372, 20656, and 20920 as standing for the principle that "scope is an exclusive grant of the right to perform work covered thereby." (Organization's emphasis). The Organization concludes that "under the Signalmen's Scope, signal forces have an exclusive right to perform all work on hot box detectors."

In response to the Carrier's argument that there is no past practice of signalmen performing the disputed work, the Organization argues, in its rebuttal statement, that this is a new argument and cannot be considered.

The Organization also notes that scope and several other proposals, wherein the Carrier is seeking increased flexibility in job assignments (and specifically the right to use officers to perform craft work) are presently subject matters of collective bargaining. The Organization argues that the Carrier is trying to obtain, through an award of this Board, what it was unable to obtain at the bargaining table.

The Organization points out, finally, that this Board's decision must be based solely on the current Signalmen's Agreement, and that it cannot be based on demands for increased managerial flexibility currently on the table in a national dispute that is in mediation.

The Carrier argues that the Claimants do not have a contractual right to place mile-post markers on hot box detectors. The Carrier contends that neither the Scope Rule nor Rule 8(a) expressly reserves the disputed work to signal employees.

The Carrier further argues that the Organization has not met its burden of proving that there is a past practice or custom of signalmen performing the disputed work. The Carrier cites a number of awards (including 13336, 13347, 14279, 18919, 19604, and 19506 through 19513) which stand for the principle that "where a specific category of work is not defined under the Scope Rule of the Agreement, the employees must show by a preponderance of evidence that by tradition, custom and practice on the property they have performed such work to the exclusion of all others on the Carrier's entire system."

The Carrier emphasizes that classification rules and scope rules should not be construed as job descriptions; that this Division has consistently held that such rules do not guarantee or reserve work exclusively to any specific classifications (Awards 12943, 17706, 18478, 12668, 18471).

The Carrier notes that the General Chairman "readily concedes that the installation of mile-post markers is not generally recognized as signal work." The Organization is quoted as arguing, instead, that the maintenance of hot box detectors is recognized as signal work and that the addition of mile-post markers will increase the duties of the maintainer. This, the Carrier argues, is a hypothetical situation. There is no evidence that any signal operation was altered or that the maintenance of the equipment was changed. As such, the Carrier concludes, the claim cannot be ruled upon.

The purpose of placing mile-post markers on the detectors, the Carrier adds, is for the benefit of train crews. "Train crews riding in the caboose can check the hot box detectors for a clearance indication for their train" and then report the results to the front end of the train, using the mile-post marker to identify the box's location.

The Carrier also argues that it "retains the prerogative to determine the job content of positions."

Moreover, the Carrier notes, there were no wages lost in this case. On the dates in question each Claimant was on duty and under pay. If such work were required it would have been done, the Carrier argues, on regular time. The Organization demands overtime pay for the two hours and forty minutes on the two days in question that it took to install the markers. The Carrier alleges that the Organization is attempting to obtain, through an opinion of this Board, a punitive penalty for an alleged violation of the agreement.

It is the placement of the mile-post markers on the hot box detectors that is the sole issue before the Board in this case. We will determine if this is part of the work associated with the installation of the detector and thus subject to the cited Scope Rule.

The Board will not consider the hypothetical issue of how the presence of mile-post markers affects the maintenance of hot box detectors. If, in fact, Signal Maintainers must now make sure that the numbers remain in place and are legible, that is not an issue before us.

An important distinction must also be made between the installation of a mile-post marker on a hot box detector and a number-plate on a signal. The number plates are installed system-wide and are specifically discussed in the Carrier's Maintenance of Way rule book. In addition, it is generally recognized that the number plate installation is to be done by a signal maintainer and that the purpose of the plates is primarily to aid the maintainers in their work.

By contrast, the mile-post markers were not installed on detectors system-wide and are not specifically covered by the Agreement. Indeed, it is likely that the Agreement never contemplated such work. Since the work was not done system-wide it is not considered to be generally part of a detector's installation. That the work was not contemplated by the Agreement is understandable, since it has, apparently, never been done before. Thus, there is no preponderance of evidence that, by tradition, custom and/or practice on the property, Signal Maintainers have performed the work to the exclusion of all others. (The Board notes that even if past practice was not fully discussed on the property, it is a consideration for us in determining the craft or class to which a type of work may belong.)

In order to meet its burden, the Organization focuses on the purpose for which the work was performed. However, the Carrier demonstrated that the mile-post markers serve, at least, a dual purpose. The Board is convinced that the installation of mile-post markers on hot box detectors at mileposts 491 and 465 was not solely or even primarily for the benefit of signal maintainers.

The justification provided by the Organization regarding the work being for the purpose of the hot box detector is not convincing. To say that the disputed work was for the "purpose" of hot box detectors by arguing that if there were no detectors there would be no work is, on the one hand, to rob the word "purpose" of any real meaning. On the other hand, if we consider "purpose" to refer to the aim or role of the work, then the Carrier has shown that the work had more than one purpose.

The Board rejects the Organization's argument that the work was part of the "hot box detector system" because the markers were not included on all detectors and because the markers were demonstrated to have a role outside of the system.

The Board concludes that there is no basis in the contract, in past practice or in the intrinsic nature of the work for our finding that the placement of mile-post markers on hot box detectors is part of the work associated with the installation of the detector. This is not a case of a Carrier trying to obtain, through the Board, what it could not obtain in negotiations, but a legitimate defense of the Carrier's right to take actions not prohibited by the letter or the intent of the Agreement.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.