NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23481
THIRD DIVISION Docket Number SG-23893

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Fort Worth and Denver Railway Company:

Claim No. 1

On behalf of Messrs. A. Green, G. P. Howard and W. M. Carter, members of Signal Gang No. 2, for sixteen (16) hours at time and one half rate because persons not covered by the Signalmen's Agreement installed appurtenances (railroad crossing signs and track signs) to the crossings signals on or about October 12, 1979.

(General Chairman file: FWD-79-209. Carrier file: SG-23)

Claim No. 2

On behalf of Messrs. C. W. Willenborg, W. H. Nevile, S. D. Lavender, H. R. Benthall and D. L. Bottroff, members of Signal Gang No. 3, for sixteen (16) hours at time and one half rate because persons not covered by the Signalmen's Agreement installed appurtenances (railroad crossing signs and track signs) to the crossings signals on or about October 15, 1979.

(General Chairman file: FWD-79-213. Carrier file: SG-23)"

OPINION OF BOARD: This case is the consolidation of two claims brought by the Organization on behalf of eight claimants who are members of two signal gangs at Wichita Falls and Fort Worth, Texas. The Organization charges the Carrier with violating the Scope Rule (Rule 1) when persons not covered by the applicable agreement installed railroad crossing and track signs at highway grade crossings along the Carrier's line. According to the Organization, the signs are appurtenences to highway railroad grade crossing protection systems and, therefore, under Rule 1, the installation of the signs is specifically reserved to the Signalmen. The Organization requests this Board to award the claimants wages lost for being deprived of the work on two days in October, 1979.

The Carrier raises three defenses. First, the Carrier claims the disputed work was not performed at its instigation, not under its control and not primarily for its benefit. The Carrier contends the State of Texas contracted to have the work performed for the state's benefit. Second, the

Carrier argues that passive traffic signs can hardly be considered integral to the Carrier's highway grade crossing protection system so such signs are not appurtenant to the signal system. Lastly, the Carrier asserts that since the Scope Rule does not refer to passive traffic signs, the Organization must demonstrate (and it has failed to do so) that the disputed work has historically and traditionally been performed by signal employes on a systemwide basis.

The signs in dispute are designed to warn and inform oncoming motorists concerning the number of tracks at a railroad crossing or to indicate to the motorist that he is at a grade crossing. The issue is whether these particular signs are appurtenances to highway railroad grade crossing protection systems within the meaning of subparts (A) and (C) of Rule 1.

The Organization refers us to Award No. 3, Case No. 8 of Public Law Board 2732 (Lieberman) where the Board did not specifically rule that such signs are appurtenances but found that signal employes had exclusively installed the signs for more than thirty years. Thus, the Public Law Board sustained the claim but only because the parties by their past practice (on that property) construed the installation of the signs to be within the scope of work reserved to the signal employes. In this case, we have diligently searched the record and we find no evidence presented by the Organization which shows that signal employes have traditionally and historically performed the disputed work on this property. Thus, Award No. 3 of Public Law Board No. 2732 provides us with little guidance in deciding this case.

To demonstrate that the signs are appurtenances specifically covered by Rule 1, the Organization must prove that the signs are an integral part of or essential to the Carrier's highway grade crossing protection system. Third Division Awards No. 11973 (Kane); No. 13857 (Mesigh); No. 19251 (Devine) and No. 22705 (Kasher). We rule that the Organization has not met its burden of proof in this case. The signs which are mostly informational in nature are not substantially related to the highway protection system or to the approach or presence of a train. Thus, the disputed work was not exclusively reserved to the signal employes on this property.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.