

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23875  
Docket Number SG-23313

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Monongahela Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Monongahela Railway Company:

Allow J. F. Kinosh, 35778, Signal Mechanic, and J. W. Wardman, 37157, Leading Signal Mechanic, seven (7) hours at the punitive rate, 5:00 p.m. to 12:01 a.m., account of contractor's light plant used on company property for derailment at White Cottage, 10-27-78. (S-1-79) (M-3399)

Allow J. C. Thomas, 36038, Signal Mechanic, and E. R. Nesti, 34684, Assistant Signal Mechanic, seven (7) hours at the punitive rate, 5:00 p.m. to 12:01 a.m., account of contractor's light plant used on company property for derailment at White Cottage, 10-28-78. (S-1-79) (M-3399)"

OPINION OF BOARD: As a result of a derailment which occurred in the vicinity of White Cottage Passing Siding on the Waynesburg Southern Extension, Carrier, early on the morning of October 27, 1978, decided to undertake continuous wrecking operations so as to open the right-of-way for other movements. As part of its decision, Carrier determined this undertaking required using a portable emergency flood lighting system more modern and efficient than the one it owned. Accordingly, Carrier contacted the local contracting firm of Solomon and Teslovich and made arrangements to use their equipment which consisted of the following components: four (4) 1,000-watt multi-vapor lamps powered by a 12 horsepower air-cooled diesel engine with a 43-hour fuel supply and an automatic low oil pressure shut-off. Such equipment, Carrier notes, is capable of lighting approximately 7.4 acres of ground and does not require any maintenance shut-downs during operation. In comparison, Carrier notes its own equipment constructed by employees of the Signalman Craft, consists of three (3) portable 500-watt incandescent lights and two (2) stationary 400-watt mercury vapor lights powered by a 3,000-watt alternator with a fuel capacity of approximately three (3) gallons of gasoline, requiring periodic shut-downs for checking fuel and oil.

Evidence of record indicates the Contractor delivered the portable lighting apparatus prior to the onset of darkness at the prescribed location, that said lighting system was positioned using Carrier's construction equipment, and was set up for operation by two employees of the contracting firm. The lighting system was used by the Carrier in its wrecking operations between the hours of 8:00 p.m. to mid-night on October 27, 1978 and again between the hours of 8:00 p.m. and 11:30 p.m. on October 28, 1978, at which time wrecking operations were completed. The record evidence further indicates the lighting system was activated and shut down by two (2) Carrier officers who accomplished this task by flipping a switch and pushing buttons.

The Organization submits the duties of operating the portable lighting equipment belong to employees of its Craft by way of contract language relative to the "Scope" provision contained in the Controlling Agreement bearing effective date of July 24, 1978, as well as through past practice, based on its assertion such work has always been performed exclusively by Signalmen covered under the Controlling Agreement. In support of its position, the Organization cites in relevant part the following language relative to its scope of work:

"This agreement governs the rates of pay, hours of service and working conditions of all employees in the signal department (except supervisory forces above the rank of inspector) performing the work of constructing, installing, maintaining, repairing, inspecting and testing, either in the signal shop or in the field, any and all signal systems, traffic control systems, train order signals, interlocking plants, highway crossing warning devices, electric switch lamps, hot box detectors, dragging equipment detectors, switch heaters, spring switch mechanisms, signal pole lines, communication systems, including all apparatus and devices in connection therewith, and all other work, which has been recognized as signal work by Signal Department. The following classifications include all the employees of the Signal Department performing the work referred to under the heading of 'Scope'.

NOTE: In rewriting the Scope Rule, it is the intent of the parties to the agreement to preserve to the employees covered thereby the performance of work which traditionally and regularly has been performed by Monongahela Railway Company signal employees." (Emphasis by the Organization)

The Organization maintains that during the handling of this instant claim on the property, Carrier did not confront its scope of work argument but instead attempted to excuse the violation by referring to the improved technology in portable lighting equipment and to the distinction between such equipment being leased as opposed to being owned. The Organization argues technological advancements here are of no consequence as such innovations do not have the force of removing work reserved to employees of its Craft from the Scope Rule of the Controlling Agreement. In support of its position on this point, the Organization cites Third Division Award No. 20540, which involved the use of a machine, instead of a shovel, wherein the Board held that the hands on the controls of a machine produce the same results as hands on a shovel would have produced. The Organization further argues that equipment ownership does not justify Carrier's decision to contract-out work covered by its Scope Rule. The Organization submits, Carrier is contractually obligated under the Scope Rule in conjunction with Agreement Rule 705 to assign work to signal forces reserved unto them by the scope of work language and to furnish whatever tools and equipment they may need to perform said work.

Carrier argues technological innovations in portable lighting apparatus is key to the subject dispute as such advancements have eliminated the functions of signal forces reserved to them by their Scope Rule, relative

to maintaining the lighting systems when used. Carrier maintains the newer lighting systems do not require the services of stand-by employees to fuel and oil engines and generators as well as to string out and constantly move electrical lines and lights and make numerous connections. Carrier notes, however, that in view of its commitment to the Organization made during collective bargaining negotiations in 1977, to wit, that whenever portable flood lights owned by it were used at wreck scenes, such equipment would continue to be handled by Signalmen, it reaffirms its position that in those situations where such obsolete lighting equipment must be utilized, Signal Department employees will be used to perform the necessary tasks required. Carrier forcefully argues however that this commitment does not in any way preclude its renting portable lighting equipment more adequate and efficient than its own equipment to light remote derailment sites and that when such rental equipment is used, it is not contractually obligated to use Signalmen to engage in the incidental work of flipping switches and pushing buttons to activate and shut down such rental equipment.

As to the Organization's assertion the disputed work has historically and exclusively been performed by employees of its Craft, Carrier refutes this position by identifying five (5) instances, two (2) prior and three (3) post the subject case, in which it has used rental lighting equipment at derailment sites and where it has not utilized the services of signal forces to maintain the equipment, noting that in said instances, no claims were filed nor challenges raised by the Organization.

Upon reflection of all the evidence before us, it is our determination the Organization failed in meeting its burden of proof relative to overcoming the arguments advanced by the Carrier, especially vis-a-vis, the claim of exclusivity of work as being applicable when rental lighting equipment is used at derailment sites. Accordingly, we find we must deny the instant claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1982.

