NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24779
THIRD DIVISION Docket Number SG-24818

Edward L. Suntrup, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al.:

(a) Carrier violated the Signalmen's Agreement, particularly Scope Rule 1, when they instructed and permitted Maintenance of Way Employee J. W. Whitehead to perform duties that have historically been assigned to and performed by Signal Employees covered by the Signalmen's Agreement, when it is necessary to protect underground signal cable.

(b) Carrier should now be required to compensate Signal Maintainer D. L. Watson, in addition to any other compensation due him, an amount of no less than forty (40) hours each week at his overtime rate starting June 29, 1981 and continuing thereafter until a signal employee is assigned to the work of protecting the underground signal cable. [General Chairman file: SR-241. Carrier file: SG-517]

OPINION OF BOARD: This is a contract interpretation dispute initiated on August 6, 1981 by the Organization on behalf of Signal Maintainer D. L. Watson. The Organization's claim is that Maintenance of Way employee J. W. Whitehead performed work which had exclusively been the purview of the Brotherhood under the Scope Rule of the Signalmen's Agreement.

The instant dispute arose out of the actions of Carrier's C & S Department employees marking signal cable and microwave cable with blue flags at MP 633, north of Peachtree Station in Atlanta to protect the cable from being damaged by contractors working on a MARTA project. A review of the record, however, shows that the Organization has failed to present sufficient substantial evidence of probative value to establish the flagging operation as exclusive Signalmen work under the Agreement provision cited. A long list of Awards of the National Railroad Adjustment Board has established the precedent that in cases such as this the burden of proof rests with the moving party (Third Division Awards 13691; 19506 inter alia). That burden has not been met here.

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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984