

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25053
Docket Number SG-25185

John F. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

On behalf of the employees on Division Gang #16 (Foreman, four Signalmen, one Assistant Signalman) for 1140 hours at the straight time rate of pay, to be divided equally among the employees on the gang, account System Signal Construction Gang upgrading the highway-railroad grade crossing warning devices at Chico Road and Magnolia Street at Pascagoula, Mississippi, during December 1981." (Carrier file: 15-51 (82-1024))

OPINION OF BOARD: In December, 1981 the Carrier placed new guard crossing warning devices in service on the Chico Road and Magnolia Street crossings in Pascagoula, Mississippi. A System Signal Construction Gang was used to do the work. The Carrier contends "At Chico Road there existed a standard back-to-back flashing light and bell. At Magnolia Street there was a back flashing light on the east side of the track and a cantilevered signal with back-to-back lights on the west side ... It was determined ... it would be necessary to completely replace the signal devices at both ... crossings"

Rule 32 of the Agreement establishes District Seniority. Rule 1 (Scope) provides the agreement covers employees "engaged in the construction, installation, repair ... of all ... signals and signaling systems; wayside devices and equipment for train stop and train controls, ... automatic or other devices used for protection of highway crossings...."

Rule 51, System Gangs -- Special Rule states:

"(a) System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires and slides."

The Organization claims 1140 hours at straight time rate of pay to be divided equally among the employees on Division Gang #16, claiming the work done was upgrading of an existing installation and thus the Carrier violated Rule 51(a) by using the System Signal Construction Gang. For purposes of this Award we will assume Claimants are entitled to do the work in question by virtue of the Scope Rule unless Rule 51(a) applies.

The Carrier contends the renewal and installation of crossing warning devices is an ongoing program that has been a "major part of Signal Construction Department work for a number of years...." It further contends priority has been given to the program and "many Signal Constructions Gangs have been put on over the years..." specifically to do this work. It points to two grade crossing warning device projects of a similar nature completed in the Mobile Division in 1981 by Signal Construction Gangs as well as a total of 24 projects in 5 other Divisions, all of which manifest that a "consistent past practice exists" in the Carrier's view. Furthermore, the Carrier contends the two projects constituted new construction as the entire grade crossing warning device was replaced.

The Organization does not seriously attack the Carrier's assertion regarding past practices. Rather it relies on familiar and accepted precepts which hold the Agreement superior to practice; that silence does not amount to acceptance and that practice cannot modify an agreement. Further the Organization cites Awards holding repeated violations of a rule do not justify further violations. This Board is in full agreement with such principles but notes their applicability is to cases in which the Rule is clear and unambiguous. When a Rule is not clear and unambiguous past practice obviously becomes extremely important.

Is Rule 51(a) clear and unambiguous? Such terms as "construction work on new installations" and "necessary maintenance changes in connection with a construction project" are not precise and susceptible of one meaning only. Is the meaning of "construction project" limited to situations where no facility had previously existed? Is the term "new installations" also so limited? If old signaling devices are removed and new ones put into place are these new installations? This Board suggests the answers to these questions (and others which could be asked) are not apparent within the four corners of the Rule and the Rule is ambiguous.

As we consider the Rule ambiguous we must look beyond it to determine, if we can, the parties intent. The only real evidence of value in the record in this respect is that of past practice. While the Organization denies it has been party to any agreements to permit System Signal Construction Gangs to do the claimed work, it does not deny or contest the Carrier's position that such gangs have indeed done so. In reliance upon this evidence it appears to this Board the parties have interpreted their agreement as permitting System Signal Construction Gangs to perform work of the type which gave rise to this claim. We will therefore deny the 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

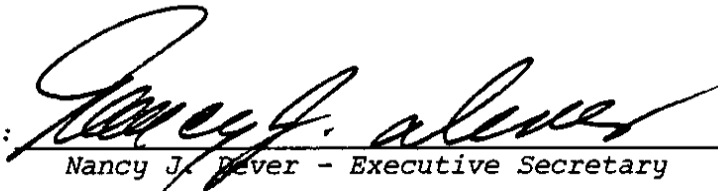
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.

