

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26414
Docket Number SG-26344

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

Claim on behalf of S. M. Reardon for two hours and forty minutes at the punitive time account of carrier allowed or permitted Track Foreman R. Jette to maintain cross-over switches at Warren, MA and thereby caused a violation of the Scope Rule of Agreement of September 1, 1981, as amended. Carrier file SD-2100."

OPINION OF BOARD: As third party in interest, the Brotherhood of Maintenance of Way Employees were advised of the pendency of this case and filed a Submission.

The Organization asserts both procedural and substantive Carrier violations which stem from the undisputed fact that on August 17, 1983, a Track Foreman lubricated switches on the main line. A Claim was filed to the Supervisor-C&S that such work belonged to the Signal Department. Claim was denied by the Division Engineer in what the Organization argues was a procedural violation of Rule 4-K-1, in that the Supervisor C&S did not respond.

Advancing the Claim on merits, the Organization argues that the "graphiting of switches and crossovers on the main line has . . . been the responsibility of the Signal Department personnel." It advances its argument with two Carrier memorandum pertaining to the graphiting of switches by Signal Forces.

The Carrier argues that no procedural or substantive violation occurred. With regard to the procedural argument, it maintains that for over five years claims had been directed to the Division Engineer and that the practice has been well known, verbally advised and followed in the submission of Claims on the property. With respect to the merits, the Carrier denies a Scope Rule violation in that such work as graphiting hand thrown switches has historically been performed by the Track Department.

This Board's review finds much in the ex parte Submissions which cannot clearly be found to have been discussed by the parties on the property. As to the two Carrier memorandum, they are referred to in the letter of September 28, 1983, from the Claimant to the Assistant General Chairman which is provided in the record by the Carrier. As such, this Board can infer that they were discussed on the property, unlike the Claim letters provided by the Carrier.

As to the procedural issue, Rule 4-K-1 refers to the "Supervisor-C&S (or other designated official)." Carrier maintains no violation in that the Division Engineer was known as the designated official to respond. The Organization never refutes the Carrier's assertion. As such, we conclude that no procedural violation occurred.

As to the merits, the Organization carries the burden of supporting its Claim of a Scope Rule violation. There is nothing in the Rule specifically assigning such work as herein disputed to Signal forces. Neither memorandum confirms that such work has been Signal work by past practice or history to the exclusion of other crafts. Carrier's rebuttal that such work as graphiting hand thrown switches has been performed by other crafts was not supported on the property, nor rebutted by the Organization. Yet the Organization carries the responsibility as the moving party to support its Claim by probative evidence beyond mere assertion (Third Division Award 25250). The Organization has failed to do that in the instant case. As such, its Claim is denied.

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

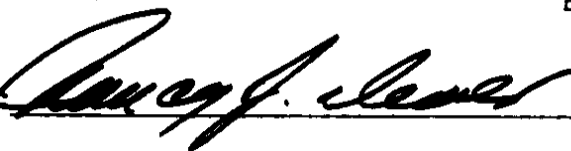
That the Agreement was not violated.

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 13th day of July 1987.