

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31495  
Docket No. SG-31579  
96-3-93-3-629

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Atchison, Topeka and Santa Fe Railway  
( Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway (ATSF):

Claim on behalf of J.P. Miller Jr., for payment of four hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 1, when it utilized a management employee on July 9, 1992, to perform the covered work of testing and troubleshooting the signal system at W.B. Junction and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 92-14-37. General Chairman's File No. 1- 1086. BRS File Case No. 9128-ATSF."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The fact situation in this case is reasonably clear and not really in dispute. The Claimant was regularly assigned as a Signal Maintainer whose territory included the work location here involved. On July 9, 1992, Carrier received a report of an improper signal indication at a point known as W.B. Junction. This is a location at which Carrier's line intersects with the Norfolk Southern property. A Signal Supervisor from each of the two Carriers came to the scene to determine whether or not the signal problem existed on their respective property. In the process of making this determination, Carrier's Supervisor "did do a test to verify the nature of the problem." After determining that the problem did, in fact, exist on Carrier's property, the Supervisor called a Signal Maintainer covered by the Scope Rule to perform the necessary corrective work.

The penalty claim which was initiated on behalf of the named Claimant requested payment of "a four hour call" alleging that the Supervisor had performed signal work which accrued exclusively to employees covered by the Signalmen's Scope Rule. The subject of the claim as listed with the Board asks for "four hours at the time and one-half rate." However, the Organization's Submission to the Board requests compensation of "four hours at the straight-time rate."

The Scope Rule which is in question in this dispute reads as follows:

"RULE 1 - SCOPE

(a) This Agreement governs the rates of pay, hours of service and working conditions of employees in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, traffic control systems (TCS), automatic highway crossing warning devices, including all their appurtenances and appliances; also electrically controlled car retarder devices, train order signals, electric signal and switch lamps, switch heaters connected to or through signal systems, hot box, high water, dragging equipment and slide detectors connected to or through signal systems; static protection installations, wayside automatic train stop (ATS), or perform any other work generally recognized as signal work performed in the field or signal shops.

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\* Pages 4 and 8 of Organization's ex-parte submission.

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(b) In addition to work which employees of the Organization signatory hereto currently perform, said employees will continue to install, maintain, and will commence repairing circuit boards of apparatus assigned to the Signal Department, as follows:

Commencing no later than January 1, 1984.

HARMON: Model 531 Carrier Transmitters and  
Receivers  
Model 1200/1201 Line Overlay

Nothing contained herein is intended to infringe on the rights or privileges of other crafts or classes of employees.

(from MEMORANDUM OF AGREEMENT dated 10-28-82,  
effective 1-1-83)

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(c) When signal circuits are handled on communications systems of other departments, the employees covered by this Agreement shall install and maintain the signal circuits leading to and from common terminals where signal circuits are connected with other circuits.

(d) The classifications as enumerated in Rule 2 include all the employees of the Signal Department performing the work referred to under the heading of 'Scope'.

NOTE: Employees assigned to positions described in the Classification Rule of the Agreement will be trained and assigned, subject to qualification rules in the Agreement, to install, maintain and/or repair the systems and devices, including their appurtenances and appliances, set forth in the Scope rule, which are introduced in the future.

(NOTE from IMPLEMENTING AGREEMENT dated 9-30-83,  
effective 12-31-83)"

It is the position of the Organization that the inspecting and testing work performed by the Supervisor constituted work which was exclusively reserved to employees covered by the aforementioned Scope Rule. It contended that the sole purpose for the tests and inspection was to effect the repair and maintenance of the signal system. It cited with favor Third Division Awards 20172 and 20510 in support of its position. The Organization candidly acknowledged that "...supervisors are permitted to perform certain tests in connection with signal system malfunctions, but it is clear that the tests and inspection performed in this case went far beyond the line between supervisory inspection and the work covered by the Agreement."

The Carrier's argument was basically twofold. Initially, Carrier argued that "testing" is not a work item which is specifically mentioned in the Signalmen's Scope Rule. Therefore, it contended, testing and inspecting of the signal equipment is not exclusively reserved to Signalmen. It insisted that the complained of work was "incidental to and an integral part of the Signal Supervisor's duties." Carrier cited Third Division Awards 4828 and 20780 in support of its contention on this issue. Carrier contended that the work necessary to correct the malfunction was, in fact, performed by an Agreement-covered Signal Maintainer.

Carrier's secondary argument, which was advanced for the first time before this Board, was that, in any event, the Claimant in this dispute could not have performed the complained of work because of the Federal Hours of Service Act.

The Board will first address Carrier's secondary argument relative to the availability of the Claimant. At no time during the on-property handling of this dispute was such a position taken by Carrier. There is a casual mention in the case record of Claimant allegedly indicating that he had been on duty "eleven hours" during a conversation between him and the Supervisor. However, that statement was never addressed by Carrier as a reason for its denial of the claim during any of the subsequent on-property handling of the dispute. All parties know, or should know, that substantive arguments advanced for the first time before this Board will not be given consideration. So too in this case on this issue.

The Board's examination of the factual situation as detailed in the case record leads to the conclusion that the Scope Rule here in question does not, by its clear language, reserve exclusively to Signalmen all of the work of testing and inspecting to determine the cause of signal malfunctions. All supervisory officials are required from time to time to make inspections and perform tests in the normal performance of their duties.

The Organization candidly concedes this point in its presentation of this case. Even Award 20510 which was cited by the Organization acknowledged as follows:

"Our conclusion is that supervisors have the right to inspect equipment only for the purpose of determining the nature of the problem and in order to assign proper personnel to make repairs."

On the basis of the fact situation as it is presented to the Board in this case, that is what occurred here. There was no first hand knowledge available on which a determination could have been made to call a Signal Maintainer from this Carrier's property until after the Supervisor had determined that the malfunction did, in fact, exist on this Carrier's property. When that determination was made, a Signal Maintainer covered by the Scope Rule was called and, in fact, performed the necessary maintenance work.

The Board cannot conclude from this case record that the Signal Supervisor crossed over the line which exists and which must be maintained between Supervisors and Agreement-covered employees. Accordingly, on the basis of the case record as it exists here, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.