

PUBLIC LAW BOARD NO. 5565

AWARD NO. 5
NMB CASE NO. 5
UNION CASE NO. 9519-NIRC
COMPANY CASE NO. 11-3.3-159

PARTIES TO THE DISPUTE:

NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORPORATION
(METRA)

- and -

BROTHERHOOD OF RAILROAD SIGNALMEN

STATEMENT OF CLAIM:

Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Northeast Illinois Regional Commuter Railroad Corporation (METRA):

A. Claim on behalf of P.R. Moore for payment of 12 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered service of lighting and tending gas switch heaters on the Milwaukee North Line on January 31, February 8, 9, 23 and 24, 1994, and deprived the Claimant of the opportunity to perform this work.

B. Claim on behalf of D.A. Christian for payment of five hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered service of lighting and tending gas switch heaters on the Milwaukee North Line on February 24 and 25, 1994, and deprived the Claimant of the opportunity to perform this work."

OPINION OF BOARD:

This claim alleges that Carrier's use of NIRC Maintenance of Way employees "manually light and tend the gas switch point heaters on the Roundout and A20 Signal territories" on the Milwaukee District, constituted a violation of the Scope Rule of the BRS Agreement. The BRS Scope Rule, cited by the Organization, states in pertinent part:

This Agreement covers the rate of pay, hours of service, and working conditions of all Signal Department employees classified herein engaged in the construction, repair, installation, inspecting, testing or maintenance, including such work performed in the railroad's Signal Department Shops, of the following:

(h) Gas, electric or other type switch point heaters (excluding Storm King or similar types) used at interlocking plants or in Centralized Traffic Control (train operation by signal indication) territory.

P.R. Moore and D.A. Christian (Claimants) were regularly assigned Signalmen, on a monthly rated pay basis, headquartered at Roundout, Illinois and Tower A-20, respectively, on Carrier's Milwaukee District. It is not disputed, that on January 31, February 8, 9, 23 24 and 25, 1994, Carrier Maintenance of Way employees were called to clean snow and ice from the switches at Roundout and A-20. In addition, the MofW forces were instructed to check the gas switch point heaters on the territory, and relight them where necessary.

A gas switch point heater is essentially a gas pipe, several feet long, with holes in it. This pipe is attached to the

underside on the outside of the rail connected to a gas line. When the gas is turned on, the holes light, causing the resulting flames to heat the rail and melt the snow.

The BRS Organization submitted the aforementioned claim asserting that: "When Maintenance of Way forces manually lit and then tended the switch point heaters and attempted to insure that the switches would not fail, they were engaged in maintenance and inspection of both the switch point heaters and the power switches themselves. Inspection of both power switches and switch point heaters is a part of the scope of the Brotherhood of Railroad Signalmen. Inspection of power switches is an FRA regulated practice for which Maintenance of Way forces are not qualified or allowed by Agreement."

Carrier denied the claim maintaining:

"The activation of switch point heaters is not included within the scope of work. The ignition and extinguishing of switch point heaters can be performed by personnel of other crafts; electric heaters controlled from remote interlocking tower operators and gas heaters controlled by Maintenance of Way employees.

A casual observation to see if the burners were working does not constitute inspection per the agreement.

Maintenance of Way force assignments during the dates in question was to remove snow which might accumulate within the area of all switch points. The ignition of gas burners was incidental to this task. If the flame were to be extinguished by the wind or conversely was to burn uncontrollably, the employee present was to turn off the flow of gas.

This action does not constitute maintenance per the agreement."

The Maintenance of Way employees were provided Third Party Notice by this Board and filed a submission which stated, in part:

"We have thoroughly reviewed the submission of the Carrier and of the Brotherhood of Railroad Signalmen (BRS), and we must necessarily conclude that the BRS is attempting to claim that its members have an exclusive right to perform the function of lighting switch point heaters. We must point out that the work of lighting switch point heaters is work that is not reserved to any one craft. The BRS has not shown that the Maintenance of Way employees involved in this claim performed any construction, repair, installation, inspection, testing or maintenance on any gas, electric or other type of switch point heater.

In that connection, several Maintenance of Way employees submitted statements alleging that during the winter months, while cleaning snow and ice from switches, it was "common practice" to reignite or light the gas burners on the switch point heaters. BMWWE maintains that the lighting of the switch heater was "incidental" to the overall snow and ice removal project.

Express language in the BRS Scope Rule reserves to Signal employees the work of "construction, repair, installation, inspecting, testing or maintenance" of "[G]as, electric or other type switch point heaters (excluding Storm King or similar types) used at interlocking plants or in Centralized Traffic Control (train operation by signal indication) territory". We are not persuaded that reignition of such gas heaters by BMWWE snow removal crews who find the flame out constitutes the repair and

maintenance work on such heaters which the quoted Scope rule language work reserves for performance by BRS employees. In the absence of an express reservation of that work in Rule language, the BRS must prove that the work at issue accrued exclusively to members of that Organization through custom and past practice on the property. Careful review of the record shows no persuasive probative evidence which would convince us that this particular work of reigniting gas switch point heater flames extinguished by snow accrued exclusively to any one group of Carrier employees rather than another.

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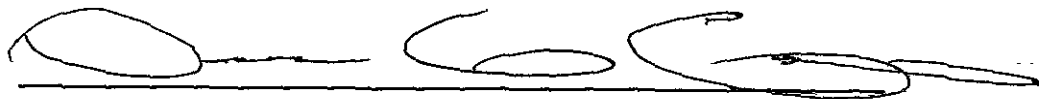
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Claim denied.



Dana Edward Eischen, Chairman

Dated at Ithaca, New York on October 11, 1996



Union Member

Dated at

on

Chicago, IL
October 21, 1996



Company Member

Dated at

on

Cheng, Ill.
October 21, 1996