

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20179**
Docket Number **SG-19768**

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

Claim No. 1.

(a) The Southern Pacific Transportation Company violated the Agreement between the Company and the **Employes** of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947, including revisions, and particularly the Scope Rule, which resulted in violation of Rule 70.

(b) **Mr.** B. E. Partridge be compensated eight (8) hours per day, in addition to compensation previously allowed, for the following dates during October and November of 1970: October 8, 9, 21, 22, 26, 27, 28, and November 2, 4, 11, 17, 18, and 19, **account employes** not covered by the Signalmen's Agreement were used to perform **recognized** signal work covered by the Scope Rule of the Signalmen's Agreement. /Carrier's File: SIG 152-280/

Claim No. 2.

(a) The Southern Pacific Transportation Company violated the Agreement between the Company and the **Employes** of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947, including revisions, and particularly the Scope Rule and Rule 70.

(b) Messrs. L. W. **DeMoll**, C. A. **Franklin**, H. **Rothman**, and B. L. Barnes be compensated eight (8) hours per day, in addition to **compensation** previously allowed, for the following dates: October 8, 9, 21, 22, 26, 27, and 28, 1970, also November 2, 4, 17, 18, and 19, 1970, **account employes** not covered by the Signalmen's Agreement **were** used to perform long recognized work covered by the Signalmen's Agreement. /Carrier's File: SIG 152-281/

OPINION OF BOARD: The two claims in this dispute arose from the Carrier's use of Water Service Department **Employes**, not covered by the Signalmen's Agreement, for the work of installing propane gas storage tanks and piping from tanks to gas fired switch heaters at four locations on the Oregon Division, Shasta Seniority District of Carrier. The Organization bases its claim on that portion of the Scope Rule reading: "**....and** all other work generally recognized as signal work performed in the field or signal shops."

The facts in this matter are not in issue. Signalmen installed the new switch heaters at the four locations and Water Service Department employes installed the propane storage tanks and the fuel lines leading to the switch heaters.

Petitioner argues that for more than sixteen years, until the present incident, the work in dispute has been performed by employes covered by the Signalmen's Agreement to the exclusion of all other Carrier employes. To support this contention, Petitioner presented, on the property, signed statements by twenty-one employes stating: "We the undersigned employes of the Signal Dept. of the Shasta Sen. Dist. since 1953 have always set the propane tanks and installed the pipe from the tanks to the sw heaters." Even assuming, arguendo, that this evidence established a consistent local practice, (which it does not do), it is insufficient to support Petitioner's argument. A practice confined to the Shasta Seniority District certainly does not establish a consistent practice for the Oregon Division much less for all Divisions of the Carrier which employ gas fired switch heaters. It is noted that Carrier uses switch heaters on at least two Divisions.

In Award 11526, involving the same parties, we said:

"The Agreement between the parties is **system-wide**....While it is true that the **Employes** do not have access to all of Carrier's records, and that it is sometimes difficult to know all that is happening in the system, it is nevertheless, the obligation of the **Employes** to make certain that the work belonging to Signalmen is specifically set out in the Agreement. If it is not so set out, then the work belongs to them only if by practice, custom, and usage of on the property, work had been done **system-wide** exclusively by Signalmen."

Award 11526 and the many other Awards over the years expressing the same principle are clearly controlling in this matter. Further, with respect to switch heaters themselves, including the installation and maintenance of both gas and electric heaters, involving the same parties, the Boar has consistently denied claims by the Signalmen under the same agreement because of lack of proof of a consistent system-wide practice. See Awards 19506, 19513, 19185, 18919, 19779, and 19511 among others. We do not find palpable error in the principles expressed in those **determinations**.

In this dispute the **Organization** has shown that the work in the Shasta Seniority District has been performed for over sixteen years by **employes** covered by the Agreement; it has not shown that the work was not performed by other employes as well..that it was exclusively reserved to Signalmen. **More** significantly the Organization has not shown by competent evidence that by tradition, custom and practice, system-wide, the work in dispute has been performed exclusively by Signalmen. In view of the foregoing, this Claim will be 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:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.

Dissent, to Award 20179, Docket SG-19768

The Majority **in** Award **20179** has effectively held that it was the Petitioner's burden to prove the negative side of the question; i.e., the absence of an exception to asserted exclusive practice. It was the Respondent in this dispute that contended that the practice relied upon was not exclusive; **in** other words, that **there** had been exception. The Carrier's defense was, therefore, affirmative and required **proof**, but the record was barren.

Award No. **20179** is in error, and I dissent.


W. W. Altus, Jr.
Labor Member