



Award No. 5509
Docket No. 5266
2-SP(T&NO)-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)

SOUTHERN PACIFIC COMPANY
(Texas and New Orleans)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company (Texas and New Orleans) Railroad violated the current agreement when it assigned work that belonged to employees of the electrical craft to employees of the Signal Department.

2. That accordingly, the Southern Pacific Company (Texas and New Orleans) Railroad be ordered to compensate Electricians B. Cervantes, L. H. Bruner, H. F. Bradford and M. C. Champion each in the amount of forty four (44) hours at pro rata rate of pay, and Electrician Helpers Edwin E. Herbert and Glen C. Killingworth, who are furloughed, each in the amount of one hundred four (104) hours at the pro rata rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Southern Pacific Co. (Texas and New Orleans Railroad Co.) hereinafter referred to as the Carrier, employs at Houston, Texas, a number of Electricians who are commonly referred to as Houston Division Electrical Forces to perform Electrical Work covered by the Scope of the Electrical Workers' Special Rules of the collective bargaining agreement between Carrier and Employees represented by System Federation No. 162.

Prior to June 20, 1965, Carrier purchased a Hydraulic Track Retarder unit from American Brake Shoe Company for installation in its Englewood Freight Yard, Houston. Electrical Construction Work Order GMO-95012 was issued by Carrier to its Houston Division Electrical Forces for the construction and installation of all electrical facilities necessary to the Hydraulic Track Retarder and the Houston Division Electrical Force commenced work thereon on June 20, 1965. The Houston Division Electrical Force was employed on said work through July 9, 1965, during which time they performed the following electrical work:

and 6203 of the Third Division. Moreover, without attempting to interpret the Signalmen's Agreement, we cannot be blinded to the fact that it explicitly 'covers rates of pay, hours of service and working conditions of all employees in the Signal Department . . . engaged in the construction, installation, inspection, testing, maintenance and repair either in the signal shop or field of . . . Car Retarder Systems . . .'
(Emphasis ours.)

* * * * *

In summary, we hold that the work here in dispute does not come within the scope of the Sheet Metal Workers' Agreement. See: Awards 1835, 2810, 3193, 3195, and 3604 of this Division.

* * * * *

AWARD

Claim denied."

In addition to the Second Division awards cited above, the Third Division has also consistently adjudged that car retarder system installation and maintenance are properly the work of Signalmen. Representative of the Third Division's position are its Awards 1486, 3365, 4712, 5218, 6203, which are respectfully recommended to the Board in further support of the Carrier's position in the instant case.

CONCLUSION

The claim and protest as presented by the organization is entirely lacking in merit or agreement support and therefore Carrier requests that claim, if not dismissed, be denied.

(Exhibits not reproduced.)

FINDINGS: The Second 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.

Petitioner contends that Carrier violated Rule 108 and 110 of the effective Agreement between the parties when Electricians were instructed to cease performing certain electrical work in connection with the installation of a new Hydraulic Speed Sensing Retarder at Carrier's Englewood yard in Houston, Texas. The disputed work was completed by Signalmen, who actually installed the car retarder system pursuant to the provisions of a separate Agreement between Carrier and the Brotherhood of Railroad Signalmen of America.

Petitioner seeks compensation at the pro rata rate for named Claimants, who are Electricians and Electrician Helpers allegedly denied the disputed work.

Carrier insists that Electricians were only assigned limited construction work such as the installation of the regular service drops to circuit breaker boxes, but that Signal Department employes had jurisdiction over the installation of all power circuits from the breaker boxes to transformers, rectifiers, and all other components of the retarder system. Furthermore, Carrier avers that the installation, maintenance, and repair of car retarder systems on the property have always been assigned to Signal Department employes.

The record reveals that the Signalmen initially filed a complaint with Carrier when electricians ran power cables between the circuit breaker boxes and the control panel, which was received prefabricated from the manufacturer, with the exception of certain wiring that was completed by Signalmen. Petitioner contends that Rule 108 of the Agreement classifies the work here in dispute as belonging to Electrical employes. Whereas, the Carrier contends that the disputed work is specifically covered by the Agreement of July 1, 1953, between Brotherhood of Railroad Signalmen and the Carrier.

The fundamental issue for determination is whether the disputed work comes within the scope of the Electricians' Agreement or the Signalmen's Agreement. Therefore, we take notice of the fact that the Brotherhood of Railroad Signalmen of America were duly notified of the pendency of the instant case and afforded an opportunity to file a submission in connection therewith. Furthermore, the effective Agreement between the Carrier and the Brotherhood of Railroad Signalmen of America was submitted in evidence and referred to by both parties in their respective Submissions to the Division.

The Supreme Court of the United States recently held that the National Railroad Adjustment Board has the authority and responsibility to determine such jurisdictional controversies upon examination of the contracts between particular railroads and Unions representing different crafts, taking into consideration evidence as to usage, practice and custom pertinent to all such agreements. **Transportation - Communication Employees Union v. Union Pacific Railroad Company**, 38US157 (December 5, 1966).

It should be noted that the Supreme Court was not required to consider the respective jurisdictional limitations applicable to each of the four Divisions of the National Railroad Adjustment Board as the particular dispute reviewed by it involved conflicting spheres of authority of two labor organizations under the statutory jurisdiction of the Third Division of the National Railroad Adjustment Board. Here, we are confronted with a dispute involving the scope of two Agreements, each under the jurisdiction of a separate Division of the National Railroad Adjustment Board. Despite this significant distinction, we must conclude that this Division is compelled to assert jurisdiction over the entire dispute and consider the instant claim because of the broad mandate issued by the U. S. Supreme Court. The pertinent language from the scope rule of the Signalmen's Agreement on July 1, 1953 reads as follows:

"This agreement governs the rates of pay, hours of service and working conditions of all employes of the Signal Department (except supervisory forces above the rank of foreman clerical forces and

engineering forces) performing the work generally recognized as signal work, which work shall include the construction, installation, maintenance and repair of . . . 'car retarder systems' . . ."

Rule 108 of the Electrical Agreement is entitled "Classification of Work" and provides as follows:

"(a) Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switch boards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting equipment; inside telegraph and telephone equipment, electric clocks, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators; inside and outside wiring at shops, buildings, yards and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors, and trucks. Cables, cable splicers, high tension powerhouse and sub-station operators, high tension linemen, powerhouse attendants operating and maintaining electric generating powerhouse equipment; electric crane operators for cranes of 40 tons capacity or over; and all other work generally recognized as electricians' work.

Equipment Installers and Telephone and Telegraph Linemen.

(b) Linemen's work shall consist of the building, installing, repairing and maintaining of telegraph and telephone circuits and equipment; pole lines and supports for service wires and cables; overhead and underground, together with their supports pipe lines or conduits for these cables; all outside wiring in yards and all other work generally recognized as linemen's work; not provided for in Section (a).

Groundmen.

(c) Groundmen shall consist of employees regularly assigned to assist linemen when said work is performed on the ground. This classification shall not include those who perform common labor in connection with the work of linemen and groundmen."

Thus, it is apparent that the Signalmen's Agreement explicitly covers the construction, installation, maintenance and repair of car retarder systems and that no reference to work of any nature on car retarder systems is included in Rule 8 of the Electricians' Agreement.

Petitioner asserts that the Electricians' Agreement must be controlling because it encompasses the disputed work and became effective prior to the execution of the Agreement between Carrier and the Signalmen's craft. However, Petitioner has offered no probative evidence to support a finding that electrical work which constitutes an integral part of the installation of a car retarder system was contemplated by the parties when the current agreement with the Electricians became effective on September 1, 1949, nor has Petitioner offered any supporting evidence as to usage, practice and custom which would sustain such a finding. Carrier asserts that the installation, maintenance and repair of car retarder systems on this property has always

been assigned to Signal Department employees, including the car retarder system initially installed at its Englewood Yard in 1953. Petitioner denies that electrical work on retarders has always been assigned to Signal Department employees and asserts that the necessary electrical work must be carved out and assigned to the proper craft of employees.

Petitioner has the burden of furnishing competent evidence to support the essential elements of this claim. Mere assertions do not constitute proof. Carrier's position is supported by specific language found in the scope rule of the Signalmen's Agreement as well as established practice on the property. By contrast, the Classification of Work Rule contained in the Electrical Agreement contains no reference to electrical work in connection with the installation of car retarder systems, and Petitioner has failed to offer any probative evidence that the work in question belongs exclusively to the Electricians' craft through custom, practice or usage. Accordingly, we must find that the particular work here in issue does not come within the scope of the Electricians' Agreement. See Awards 3871, 3789 and 3604 of this Division. Therefore, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this sixteenth day of July, 1968.