Award No. 1835
Docket No. 1630
2-B&O-FT-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the assignment of other than Electricians and Machinists to perform the work of the Electrical Workers Craft and the work of the Machinists Craft as covered in their respective work scope rules in connection with the maintaining and repairing of Car Retarders, is not authorized by the current agreement.

2. That accordingly the Carrier be ordered to:

a) Assign employes of the Electrical Workers Craft to perform the aforesaid work covered in their work scope rules of the current agreement.

b) Assign employes of the Machinists Craft to perform the aforesaid work covered in their work scope rules of the current agreement.

EMPLOYES' STATEMENT OF FACTS: The carrier installed and placed in operation about August 17, 1947 at Cumberland, Maryland, and at Willard, Ohio about January 15, 1948, mechanical devices commonly called car retarders to retard the movement of hump-switched freight cars on various classification tracks in these train yards. The speed of these cars descending the grade of tracks by force of gravity is controlled by retractable brake shoes attached to rails of yard tracks which apply to the side surface of freight car wheels.

The speed control of these cars stems from the electrical and mechanical equipment or devices installed in power houses, carrying 460 volt AC power, in towers adjacent to switching yard operations and in such yards attached to other tracks laying beyond and along the descending grade of tracks. The equipment consists of electric motors, motor generators, gas driven generators, machines or motors for operating such switches or retarders, wires and conduits, etc., required exclusively in connection with the operation and the control of these car retarders.

limited by definition. To hold that electrical workers' work properly falls to electrical workers would be meaningless in view of the fact that the carrier has hundreds of electrical workers on its payrolls. By the same token, to hold that machinists' work properly falls to machinists would likewise be meaningless.

Now, and apart from the above argument, and without prejudice to any portion of that argument, the carrier submits there are other cogent and compelling reasons why this Division can not issue the orders prayed for here. As evidenced by Awards 4712, 5218 and 6203, the Third Division has held that the maintenance of car retarder plants properly falls within the scope rule of the signalmen's collective bargaining agreement on this property, and has issued orders calling for the application of such awards. The issuance by this Second Division of the orders have sought by the employes would necessarily bring the award of this Division in direct conflict with the awards and orders of the Third Division. Quite obviously, this carrier could not comply with the orders of both Divisions. It can only be concluded that an order incapable of application has no footing in reason nor in propriety. This Division should not, and indeed can not properly, order the performance of that which it knows can not be performed.

With due regard to all these arguments, the carrier now asks this Division to dismiss these petitions, such as they may be in the absence of a bill of particulars, and to hold that these matters, undefined and vague as they are, must necessarily fall within the purview of awards already rendered by the Third Division of this Adjustment Board.

Without prejudice to any argument as to dismissal, the carrier now submits that its argument as to fact and rule is to be found in Docket 1423, Award 1523, of this Division, and it now submits to this Division the argument contained in the carrier's submission in that docket. Here the carrier presumes, as it does with the cited awards of the Third Division, that Award 1523 and the others, being a matter of public record are available to this Division.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

As stated in Award 1640 "it appears that the instant dispute is a further progressing of the same issue" as that contained in Docket 1423 on which Award 1523 is based. Carrier herein says "that its argument as to fact and rule is to be found in Docket 1423, Award 1523, of this Division, and it now submits to this Division the argument contained in the carrier's submission in that docket."

Two of the contentions therein made by Carrier have been answered in Award 1523. They are as follows:

First:—"We are not impressed with carrier's first contention the claim is so indefinite it must be dismissed. It is sufficiently comprehensive to advise all parties concerned of its nature and permit the rendition of a final and definite award after a full and complete hearing. So far as the claim itself is concerned that is all the Railway Labor Act contemplates or requires."

Second:—"Nor do we believe there is merit in the second proposition the dispute is one over which the Division has no jurisdiction. This Board

has held that in situations where the carrier has contracted with one or both parties to a dispute a matter of contract interpretation is presented for its decision and no jurisdictional question is involved."

A third contention of the carrier has been met when, as required by Award 1640, the Division notified the Brotherhood of Railroad Signalmen of America of the pendency of this dispute and gave them notice of all hearings in connection therewith.

Carrier installed and placed in operation on its property two car retarder systems. One, an electric-pneumatic type, was installed at Cumberland, Maryland, about August 17, 1947. The other, an electric type, at Willard, Ohio, about January 15, 1948. These systems operate to retard the movement of hump-switched freight cars onto the several classification tracks in the train yards. Speed, gained by force of gravity when the cars come down the hump, is controlled by retractable brake shoes attached to rails and ties of yard tracks. These brake shoes apply pressure to both side surfaces of freight car wheels.

The equipment used in connection with the operation and control of these retarder systems consists generally of electric motors, motor generators, gas engine driven generators, storage batteries, switchboards, machines or motors for operating such switches or retarders, wires, indicators, signals, conduits, etc. Air line and air compressors are also used in connection with the electric-pneumatic type.

The first question is, does the electrical and machinist work in connection with the maintaining and repairing of the car retarders fall within the scope rules of this carrier's agreement with the Shop Crafts as they relate to Electrical Workers and Machinists?

Admittedly the Signalmen are not necessary parties to a determination of this question as the answer thereto would not pass directly on any Signalman's rights. In this respect this Division has independent authority to make findings and enter awards upon disputes involving interpretation of the Scope Rules of the Shop Crafts' agreements. See Section 3. First (h), (i), (k), (m), (n), (o) and (p). However, there may be a class of employes whose relations to a dispute are such that if their interest and their absence are formally brought to the attention of a Division it may require them to be made parties before proceeding therewith. In this respect Signalmen are proper parties to a determination of this dispute and the Division could make them such if it so desired. They are, however, not necessary parties and if this is not done, or if done and the Signalmen make no appearance, the Division can, in any event, properly proceed to award relief between the parties before it.

A literal application of the language of Rule 57, Classification of Machinists' Work, and Rule 125, Classification of Electricians' Work, would require a "yes" answer to the question herein posed. However, maintaining and repairing the signal system of carrier does not belong to Shop Crafts. Such work, when done in connection therewith, is properly performed by Signalmen. In view of this situation the following language from Order of Railway Conductors of America vs. Pitney, 326 U. S. 561, has particular application: "The record shows, however, that interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position. . . . For O. R. C.'s agreement with the railroad must be read in the light of others between the Railroad and B. R. T."

Organization contends no part of the retarder system can be considered to be part of the Signal System whereas carrier says it has been generally recognized as signal work.

While not binding on us in any way we take notice of the fact that the Third Division has held the installing and maintaining of car retarder systems

on this carrier comes within the scope rule of the Signalmen's agreement. See its Awards 4712, 5218 and 6203. This is particularly significant in view of the fact that the scope rules of the two agreements cannot possibly be said to overlap and both contain the work. It is just a question of fact as to whether or not it is signal work for if it is then it is not included under the scope of the Shop Crafts agreement. The record discloses that on almost all other carriers, where car retarder systems have been installed, the work of maintaining and repairing them has been considered Signalmen's work. In this respect see Third Division Awards 1486 and 3365. From the record before us we have come to the conclusion that it is not work covered by the Shop Craft's Agreement.

In view of the foregoing it is not necessary to discuss other issues raised by the carrier but we do call attention, in view of the arguments made, to the fact that an award is not a final adjudication, such as a decree or judgment of a court, and the Division rendering the award can only order the carrier to comply with the contract as interpreted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1954.

DISSENT OF THE LABOR MEMBERS TO AWARD 1835.

The claimant System Federation contends that the assignment of other than Electricians and Machinists to perform the work of the Electrical Workers Craft and the work of the Machinists Craft, as covered by their respective work scope rules in connection with the maintaining and repairing of Car Retarders, is not authorized by the current agreements in effect between the carrier and the claimant System Federation. It, therefore, requests that the carrier be ordered to comply with its contractual obligations by assigning employees of the Electrical Workers and Machinists crafts to perform the work covered by their respective work scope rules.

The majority has denied the claim on the merits. In reaching this conclusion, the referee and the carrier members have decided the case upon grounds completely irreconcilable with decisions of this Division and incompatible with the authority vested in the Adjustment Board by the Railway Labor Act.

In numerous cases we have held, as have the courts, that the Adjustment Board's function and its jurisdiction is limited to the interpretation and application of agreements upon which claims are based, and that we have no authority to revise or amend agreements so as to resolve conflicting or overlapping coverage of work by two or more agreements of different organizations. That this is a proper interpretation of the authority and jurisdiction of the Adjustment Board was expressly held by the United States Supreme Court in **General Committee v. Missouri-K.-T. R. Co.**, 320 U. S. 323, and by the United States Court of Appeals for the Eighth Circuit in **Order of R. R. Tel. v. New Orleans, Texas & Mex. Ry. Co.**, 156 F. 2d 1, certiorari denied 329 U. S. 758. These decisions are still the law of the land and should be adhered to by the Adjustment Board. That they have not been here is clear upon analysis of the decision of the majority.

The majority opinion frankly recognizes that "a literal application of the language of Rule 57, Classification of Machinists' Work, and Rule 125, Classification of Electrician's Work, would require a 'yes' answer to the