

Award No. 2973

Docket No. 2486

2-C&O-FT-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers and
Electrical Workers)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the assignment of other than Electrical Workers and Sheet Metal Workers to perform work of the Electrical Workers' Craft and work of the Sheet Metal Workers' Craft, as covered in their respective work scope rules, in connection with the installation, maintenance and repairing of "Snow Blowers" is not authorized by the current Agreement.

2. That accordingly the carrier be ordered to:

(a) Assign employees of the Electrical Workers Craft to perform aforesaid work covered in their work scope rules of Agreement.

(b) Assign employees of the Sheet Metal Workers Craft to perform aforesaid work covered in their work scope rules of Agreement.

(c) Compensate the proper employees of the Electrical Workers Craft and Sheet Metal Workers Craft, whose identity will be determined later, for each hour of aforesaid work performed by others.

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.

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

Signal employees were used by the carrier in connection with the installation, maintenance and repairing of "Snow Blowers" at Stevens, Kentucky.

The employees herein claim that the Electrical Workers and the Sheet Metal Workers should have been and should be used to do the said work as covered in their respective scope rules of agreement in the place of others including the Signalmen.

The carrier requested in the record that Signalmen, represented by the Brotherhood of Railroad Signalmen of America, be made a party to this dispute.

Signal employees were used by the carrier in connection with the installation, maintenance and repairing of "Snow Blowers" at Stevens, Kentucky.

The employees here claim that the Electrical Workers and the Sheet Metal Workers should have been and should be used to do the said work as covered in their respective scope rules of agreement.

The Brotherhood of Railroad Signalmen of America were not given notice of the hearings in this matter in accordance with Section 3, First (j), of the Railway Labor Act. Before the merits of a dispute are decided by this Board, all parties, "involved", should be given notice of the dispute and an opportunity to be heard, as set forth in our Award No. 2970.

The Brotherhood of Railroad Signalmen of America were and are involved in this dispute, and, therefore, should receive notice in accordance with Section 3, First (j), of the Railway Labor Act.

AWARD

Consideration of and decision on the merits herein is deferred pending due notice by this Division to the organization of the Brotherhood of Railroad Signalmen of America to appear and be represented in this dispute in accordance with Section 3, First (j), of the Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.

LABOR MEMBERS' DISSENT TO AWARD 2973

The majority's refusal to decide this case on the merits renders the Division vulnerable to the stalemating of any case simply on the suggestion of a carrier that a third party is involved. The erroneousness of the majority's holding that consideration and decision on the merits should be deferred pending due notice by the Division to the Brotherhood of Railroad Signalmen is readily apparent since the statutory jurisdiction of the Second Division does not include such employees nor does the governing agreement include said employees.

The majority should have adhered to the rulings of Second Division Awards 340, 1359, 1628, 2315, 2316, 2359 and 2372 and awards of other Divisions, such as Award 8079 of the Third Division, that notice to third parties is not required where the employees' rights, if any, are not controlled by the agreement of the claimant organization or where the employees are members of a craft whose disputes are referable to other Divisions of the Board and over which the Second Division would have no jurisdiction.

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ J. B. Zink