

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 42, Railway Employees'
 { Department, A. F. of L. - C. I.O.
 { (Electrical Workers)
 { Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the current working agreement, particularly Rules 1(a), 7 and 29(a), when Carrier required and permitted Signal Employee to perform work belonging to Seaboard Coast Line Communications Maintainers on March 21, 1976.
2. That, accordingly, the Carrier be ordered to additionally compensate Communications Maintainer N. S. Howell two (2) hours and forty (40) minutes at his punitive rate of pay.

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 employees 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.

Parties to said dispute waived right of appearance at hearing thereon.

This claim is based on the alleged improper assignment of work belonging to the Communications Maintainers to a Signal Employee. Third party notice of the claim was given by the Division to the Brotherhood of Railroad Signalmen, who filed their response herein.

The specific work in question is the changing out of a portable radio in a journal defect detector at Carson, Virginia. It is the position of the claimant that the work is specifically covered by the Communication Employees' Classification of Work Rule 1(a) in that said rule covers "installing" and "maintaining", "wireless voice communication equipment". Rule 29(a) restricts the performance of work covered in Rule 1 to Communications Maintainers.

Carrier takes the position that the work is not reserved to either craft and that it was therefor acting within its prerogative and in accordance with past practice in assigning the work to a signal employee.

There is no question but the wireless radio device in question transmits a voice communication. We are asked, however, to find that because a radio is part of a journal defect detector it loses its character as a piece of wireless voice communication equipment. This we cannot do. The rule is clear. The Carrier's argument with respect to past practice is not applicable due to the specificity of the rule. The assignment of the work in question to one not covered by the Communication Maintainers agreement is a violation of said agreement.

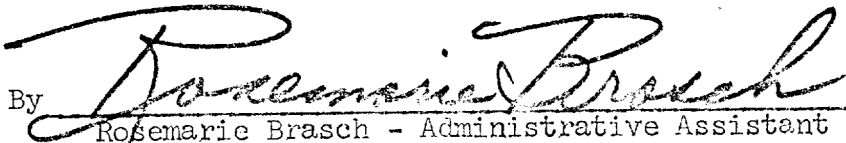
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of December, 1978.

DISSENT OF CARRIER MEMBERS
TO
AWARD NO. 777⁴, DOCKET NO. 7555-T
(Referee Franden)

This Award is palpably erroneous, replete with errors in fact and logic.

On this Carrier journal defect detectors, in addition to the features of ordinary detectors have an ingenious feature that emits a pre-recorded voice signal upon detection of a journal defect. It is unrefuted in the record that historically when the pre-recorded voice transmitter is defective it is changed out in its entirety by signalmen and returned to the radio shop to be repaired by electricians. The error in fact is committed when the referee finds that a transmitter that emits a pre-recorded voice is "wireless voice communication equipment" within the meaning of the agreement.

The transmitter of a pre-recorded voice is not "communications" equipment for the simple matter it does not communicate it is only a sophisticated signal that acts as a supplement in an incidental manner to the other signaling functions of this unique journal defect detector. A two-way radio that carries live communications between two principles would be an example of "wireless voice equipment" as used in the Agreement. But this device is entirely different. It is unidirectional and does not depend on a person to facilitate its signal function. Simply put - machines signal, people communicate.

The distinction between communication and signals in journal defect detectors was taken up in Second Division Award 5740. It was stated:

"It is true that the hot box detective system communicates; but, so also do all signals on a railroad. Historically, the work of installing and maintaining signals in the industry has been reserved to Signalmen. Whether the signal is actuated manually or by electrical or mechanical energy is immaterial. The interpretation which Electricians seek in the instant case would disregard history, custom and practice. We cannot. See, CONDUCTORS v. PITNEY, 326U.S.561; SLOCUM v. DELAWARE, L. & W.R. CO., 339U.S.239; T-C.E.U. v. UNION PACIFIC R. CO., 385U.S.157. Cf. WHITHOUSE v. ILLINOIS CENTRAL R. CO., 349U.S.366."

Also see Awards 5514, 5515, 5516, 5517, 5518, 5519 which established that a hot box detector is primarily a signal system.

In addition the awards cited above uphold the principle that the installation of signals have been historically reserved to Signalmen, an additional point of fact ignored by the referee. Also see Second Division Award 6082.

Installation of signals including the changing out of the transmitter portion of hot box detectors as well as the entire detector unit have, particularly on this property, historically have been performed by the Signalmen. The weight of this considerable past practice is simply ignored by this referee. Even if it could be said that this unique device is not a signal, the language of Rule 1A leaves much ambiguity as to its status as "wireless voice equipment". It is well settled where language is ambiguous past practice prevails.

It was clearly an error not to recognize the pre-recorded voice transmitter as a signal, or at least an incidental component of a signal device properly changed out by the Signaller who clearly and historically has had the right to install and change out journal defect detectors.

We vigorously dissent.

G.A. VERNON

G.H. Vernon

J. W. Gohmann

J. W. Gohmann

J. E. Mason

J. E. Mason

B. K. Tucker

B. K. Tucker

P. V. Varga

P. V. Varga