

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement the Consolidated Rail Corporation improperly assigned others, particularly a Signal Department Line Gang, headquarters Urbana, Ohio, to rebuild the pole line on the Dayton, Ohio Branch of the former Erie Lackawanna Railway between Maitland, Ohio and Route 33¹/₄ Overhead.
2. That the work claimed is Electricians' Work by agreement and practice on the former Erie Lackawanna, and normally accrues to Communication Department Line Gangs, particularly Line Gang No. 4 - Foreman L. Graff, and may not be assigned to others.
3. That accordingly the Consolidated Rail Corporation be ordered to return the work claimed to the electrical craft and to additionally compensate the claimants named below with an amount of money equal to the total wages paid to the Signal Department Line Gang consisting of 5 persons and one Foreman; said amount to be divided equally among the claimants:

CLAIMANTS:

L. L. Graff	- Communications Construction Foreman
C. R. Dawson	- Lead Constructionman
G. A. Pennington	- Constructionman
M. D. Bolen	- Constructionman
D. S. Lampert	- Constructionman
B. L. Robertson	- Assistant Constructionman
Mrs. B. J. Dawson	- Camp Car Cook

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.

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

Complainant Organization, the Electrical Workers, IBEW, allege Carrier improperly assigned work of its craft to employes of the Signalmen's craft. The

disputed work involved reestablishing and rebuilding a pole line within the geographical boundaries between Maitland, Ohio and Glen Echo, Ohio. This territory falls within the Carrier's Cincinnati Division, Southern Region, which formerly was designated the Dayton Branch of the former Erie Lackawanna Railway.

Complainant Organization asserts this claim arises from its serendipitous discovery that the subject work was being performed by a Signalmen Line Gang during the time the work was already in progress. By its estimation, Complainant Organization contends the project to restore the pole line, which had fallen in disrepair over a number of years due to abandonment in its use, had been underway for approximately two (2) months. When discovered on date of December 27, 1978, Complainant Organization contends the status of the project was as follows:

"... the BRS Line Gang ... had installed 24 new poles and lines between Maitland, Ohio and Route 41 overhead ...; and had installed 90 new poles and lines from Route 33⁴ Overhead ... toward Route 41 Overhead; with 60 poles remaining distributed along the way, to be installed from the aforementioned 90th pole toward Route 41 Overhead and which portion 12 remaining poles of the original pole lines..."

Complainant Organization insists that members of its craft belonging to the Communications Department Line Gang of the former Erie Lackawanna Railway had been assigned the work and, in fact, performed the original installation of the subject pole line.

In support of its position that the disputed work belongs to members of its craft, Complainant Organization cites the following special rules contained in two former collective bargaining agreements between the Erie Railroad Company and the Communications Employees of the Communications and Signal Department effective May 1, 1956, as amended in the first instance and in the second instance between the Erie Railroad Company and certain employees of the Communications Department covering; (1) Communications Supervisors, (2) Communications Construction Foremen; and (3) Cooks, effective March 1, 1967, as amended. These applicable special rules respectively read as follows:

From May 1, 1956, as amended:

"ARTICLE I - Classification

"Rule 1(d) Leading Communications Constructionman-An employee assigned to work with and direct the work of Communications Constructionmen, Assistant Communications Constructionmen and other employees classified."

"Rule 1(g) Communications Constructionman-An employee assigned to install, repair, rebuild, dismantle, inspect, test and adjust Communications poles, lines, supports and equipment, and/or appurtenances overhead and underground, with or without specifications, plans or drawings and all or any other work generally recognized as the work of Communications Constructionmen."

"Rule 1(h) Assistant Communications Constructionman-An employee training for position of Communications Constructionman."

and from March 1, 1967, as amended:

"ARTICLE I - Classification

"(b) Communications Construction Foreman-An employee under the supervision of a Communications Supervisor assigned to supervise and direct the activities of the Communications Department Construction Employees assigned under his supervision."

"(c) Cook-An employee under the jurisdiction of the Communications Construction Foreman assigned to prepare and serve meals for the Communication Department employees assigned to and quartered in the camp outfits and to maintain in a clean and sanitary condition the kitchen dining car, it's equipment and immediate premises; perform other reasonable duties that may be assigned by the Foreman and that are generally recognized as having been performed by cooks, i.e.; purchasing of groceries and supplies, arranging for the laundering of bedding."

Complainant Organization asserts that the renewal, installation, removal, repair, maintenance of poles and pole lines on the aforementioned Dayton Branch, has historically been done by the Electrical Craft, particularly the Communications Department Line Gangs and specifically, Line Gang 4. As major support for its contention on this latter point, Complainant Organization cites the following notarized letter dated September 14, 1979, submitted to it upon inquiry of Mr. Roger Harlow, a retired Communications Supervisor of the former Erie Lackawanna Railway Company. This letter reads in full as follows:

"980 Edison Avenue
Marion, Ohio
September 14th 1979

Mr. Spartaco Mazzulli
General Chairman
I.B.E.W. System Council #12
200 Seton Road
Buffalo, New York 14225

Dear Mr. Mazzulli:

Regarding your letter of September 5th 1979 of the instance of certain pole line rebuilding work being done on the Dayton, Ohio Branch from Maitland to Route 334 Overhead (between Maitland and Glen Echo).

I was employed by the Erie Lackawanna Railway Company as

Communications Supervisor with headquarters at Marion, Ohio for more than twenty six years prior to my retirement. During this time the Communications Department was custodian of the pole line and performed the work of maintenance and rebuilding of the pole line and handling crossarms bearing communications wires in the area mentioned above.

With best regards,

Very truly yours.

/s/ ROGER HARLOW
Roger Harlow
Communications Supervisor, Retired
Erie Lackawanna Railway Company now Conrail
980 Edison Avenue
Marion, Ohio 43302"

In defense, Carrier raises several procedural matters it claims bars this Board from consideration of the merits of the instant case. Foremost is the contention by Carrier that the subject claim belongs before the Third Division of our Board rather than the Second Division. Carrier bases its contention on the fact that even though all the Claimants named herein are represented by the International Brotherhood of Electrical Workers, none of them are job classified as electricians, but rather are employees of the Communications Department. As such, Carrier argues, the Second Division lacks legislative jurisdiction under Section 3, First (h) of the Railway Labor Act which sets forth explicitly the jurisdictions of each of the four (4) Divisions of the National Railroad Adjustment Board. With respect to the jurisdiction of the Second and Third Divisions, Section 3, First (h) reads as follows:

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees."

Since an affirmative finding with respect to this argument would be dispositive of the instant claim we shall address it immediately. We agree with Carrier that such a jurisdictional issue can be raised at any time in the handling of a claim, even for the first time before this Board and we have so affirmed this principle in numerous awards over the years. Thus, we recognize the legitimacy of this defense but we find we must dismiss it because Carrier has failed to provide adequate and sufficient information as to the Class of work actually performed by the Claimants herein. In raising such a defense, we believe Carrier has the burden

to prove the Claimants are not performing work of the class and craft known to be that belonging to Electricians. We believe Carrier's assertion that each of the Claimants was a communications and signal department employee under the jurisdiction of the Maintenance of Way Department not to be sufficiently enlightening or persuasive for us to dismiss the instant claim based on a determination this Division lacks jurisdictional authority over the class and craft of the Claimants.

Carrier next submits the instant claim as stated and presented is procedurally defective based on timeliness and lack of specificity relative to exact dates the disputed work was performed, the agreement rules violated and the remedy sought. In our comprehensive examination of the entire record, we find we must reject all of the procedural arguments raised by the Carrier. With regard to timeliness, we find Complainant Organization did comply with contractual time limits of the two (2) aforecited collective bargaining agreements, effective May 1, 1956 and March 1, 1967. Subsequent to its discovery of the disputed work in December of 1978, it timely filed claim well within the 60 day limitation set forth in Article 5, Rule 19(f) and Article X, Paragraph (f) respectively of the two (2) agreements. As to specificity with regard to dates the disputed work was performed we find that, although Carrier has no responsibility in perfecting a claim against itself, there is something odious in its action of withholding readily available and simple data available and known only to itself and then to turn around and use this as a defense against Complainant Organization's claim. Under the given circumstances we judge the statement of claim to be as specific as it could possibly be relative to the dates in question and to the applicable rules alleged to be violated as well as the remedy sought.

On the merits, Carrier notes that the pole line in question, though originally installed as a joint line, was, when rebuilt, solely a signal circuit pole line. As such, the disputed work, contends the Carrier, is not by agreement rule, reserved exclusively to Communications Constructionmen, Communications Foremen, or Cooks as so alleged by Complainant Organization, nor by system-wide custom, practice and tradition. Carrier argues that Section (g) Article 1 - Classification, relied upon by Complainant Organization as supporting its claim to the disputed work, enumerates only those functions related to communications poles, whereas there is no reference at all to signal circuit poles. Axiomatically, it follows, insists the Carrier, that the subject work in controversy is not communications work and therefore Claimant Constructionmen have no demand right of any kind to said work. Carrier vigorously submits the pole line in question will be used solely for signal operations, and no communications circuits are involved.

Complainant Organization argues it matters not whether the rebuilt pole line is solely a signal circuit line as all work pertaining to the installation of the poles accrues to its members except that part which pertains to installing the signal lines and wires.

The record reflects the Signalmen's Organization did file a response wherein it contends that work on a pole line which exclusively is a signal pole line accrues to signal forces and not to communications employees. In support of its contention, the Organization cites its Scope Rule under the Agreement between itself and the Erie Lackawanna Railway Company, effective January 1, 1974 which reads as follows:

"This Agreement covers rates of pay, hours of service and working conditions of all employees specified in Rule 1 engaged in the construction, installation, inspection, testing, maintenance and repair either in the Signal Shop or field of:

(a) Electric, electro-pneumatic, pneumatic, electro-mechanical or mechanical interlocking systems; electric, electro-pneumatic, pneumatic or mechanically operated signals and other signals and other signaling systems; electrically operated highway crossing protective devices and appurtenances of all these devices and systems.

(b) Electric or electro-pneumatic car retarder systems (excluding track work), traffic control systems, wayside automatic train controlling or stopping devices, Signal Department pole and duct lines and high tension lines and charging apparatus, signal wires and cables in joint duct and pole lines, bonding of track for signal and interlocking purposes.

(c) Storage battery plants with charging outfits and switchboard equipment, substation and current generating plants, compressed air plants and compressed air pipe mains and distributing systems as used for the operation of such railroad signal and interlocking systems.

(d) All other work generally recognized as signal work."

Based on a review of the entire record, we find a preponderance of the evidence favors the position advanced by Complainant Organization. In comparing the Classification of Work rules between the Electrical Workers and the Signalmen, we note as significant the Electrical Workers' Rule makes reference to poles independent of lines, whereas the Signalmen's Rule makes reference only to lines, wires and cables with no separate reference to poles only. This finding coupled with the letter from former Communications Supervisor, Roger Harlow, persuades us that the disputed work, insofar as reinstalling the poles, belonged to Claimants rather than to employees of the Signalmen's Line Gang.

With respect to the remedy, we concur in Carrier's position there are no provisions to award a penalty rate. We direct the Carrier to appoint representatives to meet with representatives of Complainant Organization to examine and analyze the relevant records and data necessary in computing the proper remuneration to be disbursed to the Claimants. In their computations, we advise the parties to determine the total amount of time involved relative to the installation of the poles only. The proper wage rate applicable to this time shall be the pro rata rate then prevailing for the communications employees. Any difference between the amount of wages actually earned by Claimants and the amount they would have earned had they been assigned to perform the disputed work shall serve as part of the proper remuneration. Additionally, any difference between the amount of wages which would have been earned by Claimants had they performed the work and the actual

amount of wages earned by the Signalmen assigned to the work shall serve as the other part of the proper remuneration.

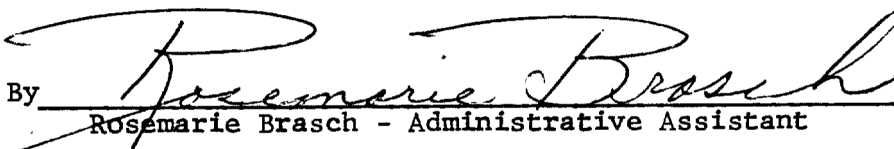
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of August, 1982.