Award No. 3173
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 EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers and Electrical Workers)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

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 employes of the Electrical Workers Craft to perform aforesaid work covered in their work scope rules of Agreement.

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

(c) Compensate the proper employes 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.

In Award No. 2973, the Division held:

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.

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

The employes 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.

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 employes nor does the governing agreement include said employes.

The majority should have adherred 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 employes' rights, if any, are not controlled by the agreement of the claimant organization or where the employes are members of a craft whose disputes are referrable 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

Thereafter, notice was given the Brotherhood of Railroad Signalmen of America and upon receipt of the following information from the Brotherhood, the case was considered by the Division on the merits:

"From the description of the dispute set forth in your letter it would appear that this is a dispute between a carrier, on the one hand, and the representatives of the Electrical Workers' Craft and the Sheet Metal Workers' Organization as to whether certain work is covered by the work scope rules contained in agreements between the carrier and the representatives of the Electrical Workers and the Sheet Metal Workers. * * *

If my understanding of the nature of the dispute, as set forth in the preceding paragraph, is correct, please be advised that neither the Brotherhood of Railroad Signalmen nor the employes it represents are involved in such a dispute between a carrier and the representatives of the Electrical Workers Craft or the Sheet Metal Workers Craft concerning the scope of agreements between the carrier and the representatives of those crafts. The rights of employes represented by the Brotherhood of Railroad Signalmen are predicated upon agreements between the carriers and our Organization. If, at any time, and for any reason, a carrier party to an agreement with our organization should undertake to assign work covered by such agreement to employes not covered thereby, we shall, of course, take appropriate steps pursuant to the provisions of the Railway Labor Act to correct any such violation of our agreement and to protect the employes we represent against any loss resulting from any such violation.

Based on the foregoing and my present understanding of the dispute it is not the desire of our organization to participate in a hearing before your Division involving the case."

EMPLOYES' STATEMENT OF FACTS: The carrier installed and placed in operation about October, 1954 at Stevens, Kentucky, devices commonly called "Snow Blowers" to prevent snow and ice from interfering with the efficient operation of power switches in that area.

The so-called snow blower system consists of air compressors and a number of pipe lines conveying compressed air and liquid to each power

operated switch. Along the rail at each switch there are about thirty openings in the pipe lines and to each of these openings a short, bent pipe nipple is welded with a spray head attached to each. Flow of air and liquid is controlled by an electrically operated magnetic valve in the pipe line at each switch. The purpose is to blow away loose snow with compressed air and spray liquid on the rails to prevent ice forming.

Carrier, over protest, made the election to assign electrical workers' work and sheet metal workers' work in connection with the installation, maintenance and repair of all of the above electrical work and pipe work to employes other than electrical workers and sheet metal workers.

No effort has been spared to compose a settlement of this dispute by these organizations on the property, but to date the carrier has declined to assign employes of the electrical workers craft and employes of the sheet metal workers craft to perform the aforementioned work.

The revised agreement, effective July 1, 1921 and subsequent dates as indicated and reprinted July 1, 1950 is controlling.

POSITION OF EMPLOYES: The electrical work in connection with this claim was assigned and performed in direct violation of Rule 140, of the controlling agreement, which reads in part as follows: "Electricians work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of;—Inside and outside wiring of shops, buildings, yards and structures".— Also, Rule 41 which reads in part: "Linemans work shall consist of—All outside wiring in yards"—Sheet metal workers' work in connection with this claim was assigned and performed in direct violation of Rule 126, of the controlling agreement, which reads in part: "Sheet Metal Workers' work shall consist of—pipefitting in shops, yards, buildings—the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes—welding on work generally recognized as Sheet Metal Workers' work and all other work generally recognized as Sheet Metal Workers' work."

A number of electrical workers and sheet metal workers are employed by the carrier at Stevens, Kentucky and were available to perform the aforementioned work. They suffered a monetary loss by not being allowed to do so. Therefore, in view of the foregoing facts and position, it is evident that certain electrical workers and sheet metal workers, through no fault of their own, were deprived of their just rights and your honorable Board is respectfully requested to so find by sustaining the employes statement of claim.

CARRIER'S STATEMENT OF FACTS: There is on file with the Second Division, National Railroad Adjustment Board, agreement effective July 1, 1921, reprinted July 1, 1950, covering machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, and carmen and their apprentices and helpers, on the carrier's former Chesapeake District. Such agreement is made a part of the record in this case by reference.

As this case involves work which has been assigned to and performed by signalmen, the rules of the signalmen's agreement will be referred to, agreement covering signalmen reprinted as of November 16, 1953, No. 5, is submitted and identified as carrier's Exhibit 1.

Agreement covering shop employes in the Maintenance of Way, Telegraph, Signal and Transportation Departments, both of which rules, by express provision, **exclude** shop employes of these crafts from work which has been recognized as Signalmen's work. These are **special rules** (and so captioned) covering shop employes of the crafts here involved in the several departments named, and by express and unequivocal provision of the Shop Crafts Agreement General Rule 180—

> "**Except** as provided for under the special rules of each craft, the general rules shall govern."

Rules 126, 140 and 141 are ineffective so far as the instant claim is concerned.

It is respectfully submitted that the claim is unsupported either by past practice or agreement rule, and should be denied. Award No. 1835 of this Division is strongly persuasive to this conclusion, as is also Award No. 2183.

At the outset of its position in Carrier's Ex Parte Submission (p. 7), Carrier urged that Signal employes, whose Scope Rule is quoted at p. 10, were involved and should be given notice in accordance with Section 3, First (j), of the Railway Labor Act.

Without in any respect waiving or minimizing Carrier's position, it is submitted that on the record in the instant claim, a denial award properly should be entered as was done in Award No. 1691 in which this same Carrier took a like position, and such denial award would not be inconsistent with ruling of the United States Supreme Court in Whitehouse, et al. vs. Illinois Central Railroad Company, et al. In the event, however, that this Referee should hold a contrary view, it is submitted that in accordance with Findings in Award No. 1523, which were given effect by another Referee in Award No. 1640, and other awards of this Board, among them Third Division Awards Numbers 5432, 5599, 5600, 5627, 7299, 8105, 8106, 8107, and First Division Awards Numbers 14093 and 14837, and numerous court decisions cited therein, a sustaining award cannot be issued until such time as other employes involved—the Signalmen—are given notice as required by the Act.

Copies of all awards herein referred to are being passed to the Referee herewith.

E. H. Fitcher

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 were given due notice of hearing thereon.

The said snow blowers at Stevens, Kentucky, were placed in operation in the latter part of 1954 or early part of 1955 and were under the control of the Tower Operator who operated them in conjunction with the retarder system, and were used to keep the power switches free of snow for the movement of cars. The said snow blowers were installed and maintained by Signal Employes. The claimants contend that the snow blowers should have been installed and maintained by Sheet Metal and Electrical employes.

In 1929, the first retarder system was installed in Russell, Kentucky. The signal employes have since that date maintained the said retarder system. The snow blowers under the evidence are an integral part of the retarder system, which has always been maintained by the signal employes. It therefore follows that the snow blowers are and should be maintained by the signal employes.

Under the shop crafts' agreement involved in this matter, the scope of agreement reads as follows:

> "It is understood that this Agreement shall apply to those who perform the work specified in this Agreement in the Maintenance of Equipment, Maintenance of Way, Signal Maintenance, Telegraph Maintenance, and all other departments of this Company wherein work covered by this Agreement is performed, subject to the provisions of 'SUPPLEMENTARY RULES Governing Hours of Service and Working Conditions of Employes in The Maintenance of Way, Telegraph, Signal and Transportation Departments, who perform the Work Classified as the Work of the Aforementioned Crafts', negotiated pursuant to Decision No. 154, Docket NO. 379, of the United States Railroad Labor Board. When in conflict with these General and Special Rules, the SUPPLEMENTARY RULES shall govern. (Supplementary Rules effective Oct. 16, 1924—addition to this rule, in black face type, agreed to June 10, 1948."

The employes herein referred to Rules 126, 140 and 141 of said Shop Crafts' Agreement.

In accordance with the above Scope of Agreement, it is necessary to refer to the supplementary rules. Under the said Supplementary Rules on Pages 28 and 29, in referring to the sheet metal workers special rules in the Maintenance of Way, Signal, Transportation and Telegraph Department, under classification of work thereof, there is a provision that signalmen under this assignment shall not be prohibited from doing the pipe fitting and sheet metal work recognized as signalmen's work around towers and interlocking plants: and under the special rules governing electricians agreed upon July 21st to 24, 1924, it was set forth that signal line wiring may be handled as at present by Signal Department employes.

Under the scope rule of the carrier's agreement covering Signal Department employes, Carrier's Exhibit I, it was also set forth that the agreement covers "rates of pay, hours of service, and working conditions of all employes engaged in the maintenance, repair and construction of signals * * * car retarder systems, including such work in signal shop, and all other work generally recognized as signal work. * * *."

In the supplementary agreement revised to August 1, 1950, it will therefore be noted under the classification of work referring to sheet metal workers that that assignment shall not prohibit signalmen from doing the pipe fitting and sheet metal work recognized as signalmen's work around towers and interlocking plants.

It also should be noted that in the work rule covering electricians in the supplementary agreement that it was understood that signal line wiring may be handled as at present by signal department employes. Also, under the signalmen's scope rule, it is shown that that agreement covers car retarder systems including such work in signal shop and all other work generally recognized as signal work.

The rules in the supplementary agreement when in conflict with the following rules, supersede and govern Rules 126, 140 and 141 in the Shop Crafts' Agreement, which were relied upon by the employes.

The evidence presented indicated that the signalmen have always installed and maintained the retarder systems set up on this railroad and that the snow blowers were an operating and integral part of the said retarder system.

From all the evidence presented, it must be found that the claim of the employes must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1959.

DISSENT OF LABOR MEMBERS TO AWARD 3173.

There is no exception in the applicable rules of the controlling agreement to justify the majority's conclusion that the instant work did not belong to the sheet metal workers and the electrical workers to the exclusion of all others. Since the agreement contains no exception, the findings and award of the majority are improper.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink