

Award No. 5740

Docket No. 5610

2-GN-EW '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(ELECTRICAL WORKERS)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That in violation of the current agreement, the Carrier improperly assigned other than employees of the Communication Department to install and maintain hot box detecting and communicating equipment during the month of October, 1966.
2. That accordingly, the Carrier be ordered to compensate District Lineman Walter Madsen for one month's compensation at the pro rata rate in the amount of \$629.43.

EMPLOYEES' STATEMENT OF FACTS: District Lineman Walter Madsen, hereinafter referred to as the Claimant, is regularly employed by the Great Northern Railway Company, hereinafter referred to as the Carrier, at Glasgow, Montana. The claimant has been assigned by bulletin to a specific district with specified headquarters at Glasgow, Montana, and normally performs all maintenance and installation work in his classification on his district, which is located on Carrier's Butte Division.

On or about October 1, 1966, the Carrier assigned certain communication work to employees of the Communication Department. This work involved the vacating of wires, circuits, and communication cables then in use for communication equipment and transferring of the same to other wire locations on the communication Pole line and communication cables.

The reason for the just referred to transfer of wires and circuits was to make these hitherto other communication circuits available for the installation of hotbox detecting and communicating devices. After the Communications Department employees had performed this preparatory work, the Carrier assigned the installation and maintenance work of the hotbox detector devices on the Butte Division to employees of the Signal Department.

tire month of October 1966, and was compensated therefor in the amount of \$626.44. The claimant did not perform a second month of service during October 1966 and is not entitled to an additional \$629.43. As stated by Referee Howard A. Johnson in Second Division Award No. 4974, Carmen v. Southern Ry.:

"This Board has no injunctive or equitable powers and cannot direct the Carrier's further conduct of its business, nor exact penalties. It can merely decide whether the Carrier has violated the Agreement, and if so determine from the record what pecuniary damage, if any, the Claimant has suffered, and order payment thereof." (Emphasis supplied)

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The notice requirements of Section 3, First (j) of the Railway Labor Act are applicable and governing herein and must be extended to the employees and employee representatives of the Brotherhood of Railroad Signalmen.
2. The Organization has not produced sufficient evidence to prove the validity of its claim.
3. Rules 45, 46 and 47 do not expressly reserve to electrical employees from the telegraph and telephone department the exclusive right to install and maintain hot box detection equipment.
4. Rules 45, 46 and 47 are restrictive in nature and were not designed or intended to vest in employees from the telegraph and telephone department an exclusive contractual right to install and maintain hot box detection equipment.
5. The Organization's attempted application of Rules 45, 46 and 47 is contrary to past practice on this property, is in direct conflict with the Signalmen's Schedule Agreement, and is in total contrast with the precedent established by this Board.
6. The monetary relief claimed by the Organization is excessive and penal in nature.

For the foregoing reasons, the Carrier respectfully requests the claim of the employees be denied.

(Exhibits not reproduced.)

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.

On motion of Carrier, granted, made in its Submission, Brotherhood of Railroad Signalmen, herein called Signalmen, was served with Third Party Notice under date of March 26, 1968, to which it responded and intervened by filing a Submission dated April 24, 1968, which Submission has been given full consideration as mandated in **Transportation-Communication Workers, et. al. v. Union Pacific R. R. Co.** 385U.S.157(1966)

In October, 1966 Carrier installed, for the first time, a hot box detective system. It assigned the work of installation and maintenance of the system to Signalmen. Communication Department workers, herein called Electricians, claim that the emphasized part of the following rule vests the exclusive right to the work in Electricians:

"RULE 45. Scope.

This department will apply to and govern the employment, working conditions and compensation of all employes of the Telegraph Department covering the construction, repair and maintenance of the telegraph and telephone pole lines, wires, cables and associated work. Also the construction, repair, installation and maintenance of all telephone and telegraph apparatus, public address systems, public broadcast radio receivers, television receivers and apparatus, printer telegraph apparatus, train communication systems and any other system or method used for communication purposes." (Emphasis supplied.)

The function of the system is to measure the heat of each passing journal of each car moving over a detection installation and convey a signal that operates a graph pen in the dispatcher's office. This, Electricians say is a "system or method used for communication purposes."

It is a principle of contract construction that when a provision of an agreement sets forth specific subject matters concluding with a generalization such as "any other system or method used for communication purposes" the generalization pertains only to subject matter of like nature and kind as the specifics. The hot box detective system is not of a nature or kind of the specific subject matters enumerated in Rule 45.

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.

It is firmly established in the case law of this Board that where a Scope Rule of an agreement is general in nature an organization claiming the right to work under the Rule must prove that historically, customarily and traditionally the work has been exclusively performed by employes covered by the agreement on the particular property. The clause "any other system or method used for communication purposes," in Rule 45 is general in nature. Electricians, in the record before us, failed to satisfy the burden of proof.

For the foregoing reasons we find that Electricians have failed to prove a contractually vested exclusive right to the work attendant to installation and maintenance of hot box detector devices on Carrier's property. We, consequently, are compelled to dismiss the Claim.

Carrier in its Submission quotes the Scope Rule of Signalmen's Agreement and immediately thereafter states:

"Inasmuch as the instant claim seeks to take work away from the signalmen that was assigned pursuant to the terms of this schedule agreement. . . ." (Emphasis supplied.)

Therefore, having found that Electricians failed to prove an exclusive right to the work of installing and maintaining the hot box detective system; and, there being no dispute as between Carrier and Signalmen as to the latter's contractual right to the work, the intervention of Signalmen as a third party in interest does not require a finding by this Board relative to Signalmen's interest.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.