

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

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

Dispute: Claim of Employees:

The I.B.E.W. Committee of Local Union No. 784 are submitting a claim in accord with Rule 4-P-1(A) of the agreement between the Consolidated Rail Corporation and the Electrical Workers represented by the I.B.E.W. as follows:

1. At AMO (on Linedale secondary near Mile pole 24) between Indianapolis and Terre Haute, Indiana on Conrail property the (B.R.S.) signal gang - Foreman Merion Underwood and gang members D. J. Cadwell, D. J. Blakely and G. W. Hicks installed the electric power service. This work was done on December 3, 1980.

2. That four (4) of the following furloughed Electricians of I.B.E.W. be compensated for eight (8) hours at the overtime rate for the electrical work performed on December 3, 1980 by the signal forces:

1. Jeff Walker
2. Arnold Scott
3. Christiana Putnman (sic)
4. R. N. Tandy

These Electricians were deprived of compensations which they were contractually entitled to receive, by reason, that Supervision of the C&S Department assigned B.R.S. Signal gang to perform electrical work in violation of I.B.E.W. Agreement, Rule No. II-A and 5-F-1(b).

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 employees 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 December 3, 1980, a four (4) member Signal Gang, members of the Brotherhood of Railroad Signalmen, connected a commercial power source to an automatic grade crossing on Linedale secondary near Mile pole 24 at Amo, Indiana, a point on the former Pennsylvania Railroad. Specifically, the Signal Gang set a pole; installed electric power lines from a commercial source to the pole; installed an electric fuse and disconnect box; installed a metal pipe running up to the top of the pole and the weatherhead to the pipe; and installed the appurtenant electrical wiring.

At the time of this occurrence, Claimants were furloughed as Diesel Electricians. Three (3) of the four (4) Claimants at the time of the Claim were reassigned as Laborers at the Avon Diesel Terminal, Indianapolis, Indiana. The fourth Claimant, J. Walker, was furloughed from Carrier's service in a similar position at Avon.

On December 22, 1980, Organization filed a Claim alleging Carrier unjustly deprived the four (4) Claimants of work which is contractually reserved to Electrical Workers as per Organization's Classification of Work Rule contained in the May 1, 1979, Agreement which reads as follows:

"II - Electrical Workers' Classification of Work

Work of the Electrical Craft shall consist of the following; the rates of pay for such work are set forth in the Base Rate Schedule and Graded Work Classification:

A. Mechanics

Electrician's work shall consist of assembling, installing, removing, maintaining, repairing, rebuilding, inspecting and testing of all current-carrying, magnetic and insulated parts of generators, electrical switches, disconnects, switchboards, meters, magnetos, distributors, motors, transformers, rheostats, electric controls, motor generators, electric heating, electric headlights, headlight generators, electric welding machines, electric rivet heaters, control jumpers, converters, relays, magnet valves, thermostats, cab signal track receiver wiring and indicator lights, electric recorders, transition control drums and fingers on locomotives; electric bells, buzzers, alarms, public address systems, radio, trainphone equipment, television, lightning arrestors, electric clocks and electric lighting fixtures; power and load testing of electrical equipment. Electrical work on refrigeration equipment, elevators, moving stairways, electric speedometers, tachometers, work on axle generator and axle lighting equipment, train control, electric brakes, air conditioning equipment, roadway equipment.

* * *

Electrical wiring; installing, maintaining and repairing conduits and condulets; building, repairing and maintaining pole lines and supports for service wire and cables, traveling, gantry, jib and monorail cranes, conductor and feed wires; cable splicing, work on storage batteries; inside and outside wiring at shops, yards, buildings and structures. Time setting and time studying in connection with work of the Electrical Worker Craft.

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Rule 5 - F - 1(b)

None but mechanics or apprentices regularly employed as such shall do mechanics work of each craft except foreman at points where no mechanics are employed. However, craft work performed by foremen or other Supervisory employees employed on a shift shall not in the aggregate exceed twenty (20) hours a week for one shift, forty (40) hours a week for two shifts, or sixty (60) hours for all shifts."

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Organization contends that Claimants were qualified and available to perform the "feeding service" installation work which is involved in the instant case. Moreover, according to Organization, Claimants were contractually entitled to perform the work embodied by the clear and unequivocal language of the applicable Classification of Work Rule, rather than the Signalmen whose Scope Rule only refers generally to the disputed work. In this regard, Organization supports its position by citing Second Division Award No. 5470, which, in pertinent part, states:

"It is firmly settled 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 employees covered by the agreement on the particular property."

It is Organization's position that Second Division Award No. 5470 places the burden of proof on Carrier to prove that Signalmen have historically, traditionally and exclusively performed the work in question. According to Organization, Carrier has failed to offer one scintilla of evidence to establish a past practice where Signalmen install poles and feeder service work. While noting Carrier's lack of evidence establishing a past practice, Organization offers the statement of a retired Road Electrician, John Dvorak, who, by his account, allegedly was customarily and historically assigned to perform the exact same work which was performed by the Signal Gang on December 3, 1980.

Carrier readily admits that the Signal Gang connected the power supply to the automatic grade crossing protection at Amo, Indiana. Furthermore, however, according to Carrier, not only did the Signal Gang perform the disputed task as charged, but Signalmen have historically performed this work on the former Pennsylvania Railroad both by Agreement and also by past practice. Accordingly, Carrier cites the following portions of the Signalmen's Scope Rule, in effect at the time of the Claim, which reads as follows:

"SCOPE

These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction, installation, repair, inspection, testing maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work:

* * *

Highway-railroad grade crossing protection systems (other than those manually operated)"

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Carrier also justifies its action herein by noting that Rule 3-C-6 of the parties' controlling Agreement relieves Carrier from recalling furloughed employees for duty unless the task(s) require(s) more than sixty (60) days to accomplish.

Regarding the statement of the retired Road Electrician, Carrier asserts that his statement that he customarily performed the disputed work is merely hearsay and is not specific, and thus cannot be accorded any weight whatsoever in this consideration.

Lastly, Carrier further argues that Claimants Scott, Putnam and Tandy, in addition to being unqualified to perform the disputed task on December 3, 1980, were gainfully employed as Laborers at Carrier's Avon Diesel Terminal at the time of the alleged infraction, and, therefore, were undamaged by Carrier's action herein.

In the progression of this dispute, Third Party (Brotherhood of Railroad Signalmen, AFL-CIO-CLC) intervened and argued that their Scope Rule, cited hereinabove, specifically refers to highway crossing protection and other power supply. Consequently, the Signalmen contend that their Scope Rule's specific reference to the disputed work grants their members a superior right to perform the task when compared with the vague general language contained in Organization's (Electricians') Classification of Work Rule. Additionally, Third Party also argues that the precedent of the Second Division of the National Railroad Adjustment Board establishes that all work in a signal system, such as that which is disputed herein, is reserved to the members of the Brotherhood of Railroad Signalmen (Second Division Award No. 3604). (See also: Second Division Awards 1835, 2810, 3871, 4157, 4246, 4326 and 6082; Third Division Awards 10730, 12300 and 19525; and Fourth Division Award 3089).

Organization counters Third Party's arguments by reiterating that its members (Electrical Workers) customarily performed the disputed "feeder service work;" and, consequently, any claim to the installation work by the Signalmen's Organization was waived by virtue of Third Party's failure to make timely objections to those prior assignments.

The Board has carefully read, studied and considered the complete record in this case and is persuaded that Carrier's position is correct and, therefore, must be sustained. In support of this determination, we note that the Signalmen's Scope Rule contains a specific reference to the particular work in question ("Highway-railroad grade crossing protection systems [other than those manually operated])." Thus, Third Party's Rule, substantially in effect prior to the formation of Conrail and in effect on Claim date, grants the members of the Brotherhood of Railroad Signalmen the right to perform work on highway railroad grade crossing protection including all appurtenances and power supplies.

While Organization's Classification of Work Rule does reserve some of the work in question, said Rule does not attain the specificity embodied in Third Party's Scope Rule. Moreover, Third Party's Scope Rule contains a savings clause which apparently would permit Signalmen to perform the disputed work even if Organization had been able to contractually reserve this task for its members.


Given that Organization's Classification of Work Rule does not specifically reserve the Claim task, Organization's attempt to prove their members' past practice right to install feeder service leading to Carrier's signal system by relying upon the hearsay statement of a retired Road Electrician is found to be insufficient to overcome the specific language contained in Signalmen's Scope Rule. As has been noted by this and numerous other Boards in numerous Awards, clear contract language must always prevail over weak, undocumented hearsay evidence alleging a contrary past practice.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.