

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the Brotherhood that the Carrier violated the provisions of the current Telegraph and Signal Agreement when on or about April 22, 1946, and continuing until on or about October 5, 1946, it contracted out work generally recognized as Telegraph and Signal work (installation of a car-retarder system at Pitcairn, Penna.) which accrues to employees of the Pittsburgh Division, Telegraph and Signal Department, who are covered by the current Telegraph and Signal Agreement.

(b) Claim that a comparable number of Telegraph and Signal Department hourly-rated employees of the Pittsburgh Division who were entitled to this work, be compensated at the rate of time and one-half for all time made by the contractor's hourly-rated workers while installing the car-retarder system.

(c) Claim that a comparable number of Telegraph and Signal Department monthly rated employees, as classified in Article 7, Section 1 of the current agreement, on the Pittsburgh Division who were entitled to this work, be compensated as provided in Article 5, Section 1 (a) for all time made by the contractor's monthly rated workers of similar class while installing the car-retarder system.

EMPLOYEES' STATEMENT OF FACTS: The Telegraph and Signal work involved in this claim constitutes the installation of a car-retarder system at Pitcairn, Penna.; by contractor's workmen who do not hold seniority rights under the current Telegraph and Signal Department Agreement.

A brief history, development, and description of car-retarders is herewith presented.

Originally, all freight cars were classified in flat switching yards, but in order to reduce switch engine hours and speed up operation, hump or gravity yards were installed in many places throughout the country so that after a car was pushed over the top of the hump by a switch engine, it would accelerate down the hump by gravity to the classification tracks, each car or cut of cars being ridden by a car rider to control speed of car or cars. Switchmen were used to operate the classification yard switches. The next move for effecting economies was the application of **power-operated** switches whereby one operator replaced a number of switchmen. The latest improvement at hump yards permits a few operators, controlling the car-retarders, to do the work formerly requiring a large number of car riders and switchmen.

Each car-retarder unit is an arrangement of braking shoes located along and parallel to the rails. These shoes, operated by power, are forced

regard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the work of installing car retarder systems involved herein does not accrue to Telegraph and Signal Department employees.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contracted with the Union Switch and Signal Company to furnish and install a car retarder system at the West-bound Hump, Pitcairn, Pennsylvania. The installation was made between April and October 1946. Employees claim a violation of the Agreement in contracting out covered work. Shortly after commencement of work by the contractor's forces in May of 1946, the Employees protested the use of contractor's workers to perform the work involved but the protest was not allowed by Carrier representatives. The Scope Rule of the Agreement reads as follows:

"These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, The Long Island Rail Road Company and Baltimore and Eastern Railroad Company and their respective Telegraph and Signal Department employees, of the classifications herein set forth (and hereafter these Agreements for the sake of convenience shall be referred to as 'the Agreement')—engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telephone and telegraph office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and the maintenance of car retarder systems, and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work—represented by the Brotherhood of Railroad Signalmen of America and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees of the Pennsylvania Railroad Company, The Long Island Rail Road Company and Baltimore and Eastern Railroad Company, specified in Article 1 hereof, namely, inspectors, assistant inspectors, foremen, assistant foremen, leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, signalmen, assistant signalmen, and helpers." (Underscoring supplied.)

We have underscored portions of the Scope Rule to more clearly set forth the contention of the respective parties.

Carrier has contended that the history of the negotiations leading to the adoption of the Agreement reveals that the Employees proposed the adoption of a scope rule which would have required Carrier to use Telegraph and Signalmen to install car retarder system, but that Carrier did not agree to such a rule, and concludes that under the Agreement the work of "maintenance" of car retarder systems accrues to Telegraph and Signal Department employees but not their "installation". The record reveals that the Employees had submitted a scope rule, which was not finally adopted, which clearly enumerated installation of car retarder systems as covered work. However, from the language of the rule as finally written and the short history of the

negotiations set forth in the record, it is clear that the Organization in finally agreeing to the present rule did not waive its demand for the inclusion of work in connection with installation of car retarder systems, and the Carrier did not waive its refusal to include installation. The rule as finally written is clearly a compromise, both parties leaving as a question of fact a determination as to what is—all other work in connection with installation and maintenance of car retarder systems that has been generally recognized as telegraph, telephone or signal work—. That, we believe, is the only reasonable construction which can be given to the language in the Scope Rule to which we have applied double underscoring.

In the light of this conclusion we have examined the record for evidence to establish what is—all other work in connection with installation and maintenance of car retarder systems that has been generally recognized as telegraph, telephone and signal work—.

On the one side, on behalf of the Employees, we find the general statement in their presentation that car retarder system work, either installation or maintenance, is generally recognized signal work and that statement is repeated in one form or another in four or five places throughout their presentation. Employees also cite Awards 1486 and 3365 which were sustaining awards in connection with some phases of car retarder work being performed by employees outside the Agreement. The Agreements under consideration in those instances, however, expressly included installation of car retarder systems within their scope, hence they are not enough standing alone to establish what work in connection with installation is or is not generally recognized as telegraph, telephone or signal work. Employees further point to the fact that the Union Pacific Railroad has just completed installation of a car retarder system at Pocatello, Idaho, by employees covered by the Signalmen's Agreement and that Carrier has installed and rebuilt retarders at Pitcairn Eastbound Hump from 1942 to 1947 by the use of its own forces. On the other side, Carrier denies that the installation of car retarder systems has been "generally recognized as telegraph, telephone or signal work" and cites one at Eastbound Classification Yard at Pitcairn which was installed by manufacturer's workers under contract, and another at Enola where again the installation was performed by manufacturer's workers. With respect to the work at Eastbound Yard, Pitcairn, cited by Employees, Carrier asserts that consisted solely of the maintenance and renewal of the existing car retarder system and claims such work of maintenance and renewal of parts of a car retarder system has no bearing on the question. There is the further assertion that on the Pennsylvania Railroad there has been no recognition of installation of car retarder systems as generally recognized telegraph and signal work and, furthermore, it is denied that it has been generally recognized to be signal work by other railroads except in those specific instances where Telegraph and Signalmen Agreements specifically provide for installation by Carrier employees. It is further submitted by Carrier that it has clearly shown that the installation of car retarder system has not been performed on this Carrier by employees of this class and consequently the custom and practice of the Carrier in this regard cannot support the claim.

It is apparent from this resume of the evidence submitted by both parties that each has fallen into error in preparing the record for presentation to this Board. We can form no inferences as to what is generally recognized as telegraph, telephone or signal work merely from repeated assertions of the conclusion and repeated denials thereof. Neither can we conclude that work is generally recognized as telegraph, telephone or signal work from two or three instances where Carriers have used Telegraph and Signal Department employees to do certain work when we consider the great number of Carriers there are in this country. On the other hand, we cannot conclude that certain work is not generally recognized as telegraph or signal work merely because it may not have been recognized as such on this Carrier. Evidentiary matter leading to the determination of the factual question left open in the doubly underscored language of the Scope Rule cannot be restricted to the practice which prevailed on this Carrier. We are charged with notice, and the Carrier knew at the time of signing this Agreement, that

the Brotherhood here involved is a large organization and has Agreements with many Class I railroads in this country and this general language in the Scope Rule was not intended to be narrowly confined to what the custom and practice was on this particular Carrier. Evidence of Agreements with other Carriers and practice on other Carriers with respect to recognition of work in connection with installation of car retarders as belonging to a particular craft would be clearly relevant in attempting to resolve the question of what is generally recognized.

It is apparent, therefore, that there is a deficiency in the record with respect to adequate evidence upon which a valid conclusion may be based with respect to what does or does not constitute—all other work in connection with installation and maintenance of car retarder systems that has been generally recognized as telephone, telegraph, or signal work—. Accordingly, the case will be remanded to the parties to jointly or severally develop the necessary additional facts to enable this Board to pass upon the factual question involved in the light of the opinion expressed above and to make further effort to settle the controversy, with the privilege, of course, of re-submitting the case with the facts more fully developed in the event of failure to reach agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the dispute should be remanded to the parties to jointly or severally develop the facts and to make further effort to settle the case.

AWARD

Claim remanded in accordance with above Opinion without prejudice to the rights of the parties, or either of them, to resubmit the dispute if not disposed of by them.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.