

Award No. 6272

Docket No. SG-6334

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Livingston Smith, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the Pennsylvania System Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad for time and one-half because of Western Union Line Gang removing their telegraph wires and glass insulators from Pennsylvania Railroad poles between Van Tower and Schererville, Indiana.

EMPLOYES' STATEMENT OF FACTS: On May 7, 1948, Western Union Telegraph Company Line Gang, consisting of a varied force of 4 to 10 men, started removing wires and glass insulators from Pennsylvania Railroad pole line between Van Tower Logansport, Indiana, and Schererville, Indiana, a distance of 83.9 miles.

There were 12 wires taken down between Logansport and LaCrosse Tower, 11 wires taken down between LaCrosse Tower and Mile Post 258, 9 wires from Mile Post 273. There were 2 copper wires left to replace iron wires in F-98 circuit from Mile Post 273 to Mile Post 280, with 11 wires taken down.

Prior to October 1, 1927, the pole lines and wires on this Division of the Carrier's property were owned by the Western Union Telegraph Company. Effective October 1, 1927, the Pennsylvania Railroad purchased the pole lines structure, but certain wires on the pole line structure remained the property of the Western Union Telegraph Company. Since that date these wires have been renewed several times by Pennsylvania Railroad Western Region Line Gang, covered by the T. & S. Agreement. The maintenance of these wires has been performed by T. & S. Department Maintainers for approximately 21 years.

This claim has been handled in the usual manner on the property and was progressed up to and including the highest officer of the Carrier designated by the management to whom appeals may be made, without reaching a satisfactory settlement.

There is an agreement between the parties involved in this dispute bearing the effective date of June 1, 1943. We understand there is a copy of this agreement on file with the Board, and request is made that it be made a part of the record in this dispute.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the work involved in this dispute is work covered by the Scope Rule of the current agreement covering Signal Department employees.

"These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad

may be available to the Carrier to such claims. There are a number of provisions of the applicable agreement which might constitute defenses to a claim by a named individual, but such a vague and indefinite claim prevents the Carrier from determining whether such provisions of the Agreement have been complied with by the persons on whose behalf the claim was made. For example, the Agreement imposes time limits on the presentation of claims by individuals which the Employees should not be permitted to evade by a blanket claim of this nature.

The Carrier contends therefore, that a claim on behalf of "The Pennsylvania System Committee of the Brotherhood of Railroad Signalmen of America" is improper and must be denied because it does not comply with Article 2, Section 21 of the June 1, 1943 Agreement, nor with the provisions of the Railway Labor Act. Furthermore, a claim of this nature does not give this Board any basis for making an award sufficiently definite for the Carrier to comply with. There is no indication that losses, if any, have been sustained by an identifiable employee, and it is probable that no proof will be offered by the Organization to indicate that any such damages have accrued. Under these circumstances, such a claim is too vague and indefinite to be considered by the Board and does not furnish any basis upon which a valid award can be made.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules and working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard 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.

The Carrier has shown that under the applicable Agreement the Employees of the Western Union Telegraph Company performed no service in connection with removal of that Company's wires and glass insulators from the Carrier's pole line on the Logansport Division, that accrues exclusively to employees of the Telegraph and Signal Department; that the applicable Agreement was not violated; and that the Unnamed Claimants are not entitled to the compensation which they claim.

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

All data contained herein have been presented to the employees involved or to their duly authorized representatives. (Exhibits not reproduced.)

OPINION OF BOARD: This claim here is brought by the System Committee on the Pennsylvania Railroad for time and one-half because Western Union Telegraph Company Line Gang removed their wires and insulators from poles belonging to the Respondent.

It is asserted that Scope rule and exceptions thereto, together with a continuing history of performance of the work in question over a period of some 21 years, clearly demonstrates that the removal of the wires on the

Carrier's property should have been performed by employees covered by the effective agreement.

Prior to October 1, 1927, the poles and wires in question were owned by the Western Union Telegraph Company, but, effective on that date the Respondent purchased the pole line structure, however certain wires thereon remained the property of the Telegraph Company.

The Respondent asserts that the claim here is not properly before the Board since the claimants are unidentified within the meaning of Section 21 of Article II.

An examination of the record reveals no material difference exists in the essentials of the claim as handled on the property and as presented here. We are of the opinion that the subject matter of this dispute was presented to the Respondent on the property with substantially the same subject matter as presented here, thus being properly before the Board for adjudication.

The Board is of the opinion that the wires which were removed by the Western Union Gang while being on the property of the Respondent were, in truth and in fact the property of the Western Union Telegraph Company.

It is clear that under the contract of sale between the Respondent and the Western Union Telegraph Company, they (the Telegraph Company) retained the right, if they saw fit, to install, maintain, renew and remove their own wires on or from the poles in question, utilizing their own, or such other workers as they deemed expedient.

The record indicates that the Telegraph Company had in many instances, over a period of years, requested the Respondent to furnish on a reimbursable basis, labor and material to maintain and renew the wires retained by them.

Monetary and other benefits accrued to the employees coming under the effective agreement as the result of this arrangement; however this procedure was obviously continued at the discretion and option of the Telegraph Company. They were in no way required to continue the practice.

The work involved here is not within the Scope of the effective 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 effective Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon.
Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1953.