Award No. 6664
Docket No. SG-6665

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System General Chairman of the Brotherhood of Railroad Signalmen of America on the Chicago and North Western Railway:

(a) That the Carrier violated the scope rule and other provisions of the current working agreement bearing effective date of July 1, 1939, between this Carrier and the Brotherhood when on or about February 28, 1949, it arranged to have generally recognized signal work performed at the plant of the General Railway Signal Company by persons not covered by the current working agreement.

(b) That the regular Signal Department Employes on the Illinois Seniority District affected by reason of the violation of the current working agreement be compensated at their proper rate of pay on the basis of time and one-half for an amount of time equivalent to that required by the outside workers to perform the diverted generally recognized signal work, consisting principally of fitting up and wiring of signal instruments housings, including racks and panels therein.

EMPLOYES' STATEMENT OF FACTS: The signal apparatus and work involved in this claim consists of a portion of the construction and installation of a centralized traffic control (herein referred to as C.T.C.) system in the Illinois Seniority District from West Chicago to Tower NJ, (West Nelson) Illinois, involving approximately 160 track miles.

The Signal Section, Association of American Railroads, defines Centralized Traffic Control as:

"A term applied to a system of railroad operation by means of which the movement of trains over routes and through blocks on a designated section of track or tracks, is directed by signals controlled from a designated point without requiring the use of train orders and without the superiority of trains.

"Centralized Traffic Control is the term used to designate the complete modern system that has been developed to provide an economical means for directing the movement of trains by signal indication without the use of train order."

A comprehensive official treatise on Centralized Traffic Control is available through the medium of Chapter IV of American Railway Signaling

However, if the Board does take jurisdiction of this case, then it is the position of the carrier that in consideration of the fact the housing as subsequently purchased from the manufacturer was a complete product, there is in evidence no violation of agreement between the carrier and the Brotherhood.

There are no provisions in any agreement between the carrier and the Brotherhood which would prohibit the carrier from purchasing manufactured products complete, i.e., there is no requirement that such products must be purchased on a "knocked-down" basis to be assembled on the property by signalmen.

It is further the position of the carrier that there were no signalmen deprived of employment as a result of the carrier purchasing these five housings complete from the manufacturer and accordingly, this Board cannot consistently nor properly sustain claim of the employes that regular Signal Department employes on the Illinois Seniority District be compensated at their proper rate of pay on basis of time and one-half for an amount of time equivalent to the time required by the manufacturer to complete his product before selling same to the carrier.

All necessary data in support of the carrier's position has been previously presented to the employes and is made a part of the particular question here in dispute.

OPINION OF BOARD: The Carrier purchased fifteen bungalows or instrument houses in prefabricated form, in connection with a project for installation of Centralized Traffic Control (C.T.C.) on a portion of its right of way. Ten of those bungalows were fitted up and wired by the employes covered by the Signalmen's Agreement. The balance were returned to the General Railway Signal Company to be fitted up and wired. There is conflict in the record with respect to what the past practice on this carrier has been with respect to the performance of the work of fitting up and wiring the instrument houses. The Carrier denies the truth of the Employes' statement (supported by affidavits) that the work had been customarily performed by them for twenty years but does not cite any instances where the instrument houses were purchased fully fitted and wired by the signal manufacturing companies. We find that the record sustains the Employes' version as to the practice.

The instant agreement insofar as pertinent to the resolution of this dispute provides as follows:

> "SCOPE. 1. This agreement covers classification, rates of pay, advancement, seniority, and working conditions of employes engaged in the construction, repairing, renewing, replacing, reconditioning, and maintenance of signals or signal systems with all appurtenances on or along the railway tracks for the regulation of the movement of trains, protection of highway crossings, etc., as follows:
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> "* * * * *
>
> "(e) Centralized traffic control systems, including power operated switch mechanisms.
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> "* * * * *
>
> "(m) All other work heretofore generally recognized as railway signal work, including such tie plates, rail braces and insulated rods as may be agreed to between the signal engineer and the general chairman."
>
> "* * * * *"

It is argued on behalf of the Carrier that this rule confines all work, construction or otherwise, to which employes covered thereby have any right,

to work "on or along the railway tracks." Obviously, that was not intended by the agreement for such construction of that phrase would lead to absurd results. The necessary shop work of signalmen would then have to be considered as outside of the agreement and the work involved in maintenance and repair of signal apparatus could be taken out of the scope by the simple device of detaching it and sending it off the property to private contractors to be worked upon. Such a construction would completely negate the provisions of Article (m). Where a contract is susceptible to alternate constructions one of which would lead to a reasonable or sensible result and the other to an absurd result, the contract should be construed in the light of the former. We construe the phrases "on or along the railway tracks" as descriptive of the location of the devices set forth in the language preceding it. In effect, the phrase is the equivalent in meaning to "on the property." It does not have the effect of confining work covered by the Scope Rule to only that work which is performed on or along the railway tracks.

It is axiomatic that work embraced within the Scope of an agreement may not let out by the Carrier to others having no seniority under that agreement. That the work of fitting up and wiring instrument houses in C.T.C. systems has been customarily and traditionally performed by signalmen on this property is established by the practice shown by the employes. It is apparent that it falls into the general category of work generally recognized as "railway signal work" as well as into the more specific categories mentioned in Rule 1(e) above quoted.

It is not asserted by the Carrier that the ten instrument houses which were fitted and wired by its own employes were in any way defective. There is no basis for holding that the signal forces lacked the skills to perform the work claimed or that specialized equipment was necessary. Because of some delay in the work on the property the Carrier asserts that it sent the instrument houses to the factory for fitting and wiring to expedite the completion of the project. As evidenced by a letter to the General Chairman approximately two years before, it is apparent the project was in contemplation for a considerable period of time before actually beginning work. At that time it is also clear that arrangements had been made to have the work of fitting up and wiring of the instrument houses performed by Carrier's own forces. The inability to meet a prospective completion date could have been due as much to delay in commencement of the project as to other factors. In some circumstances this Board has indicated that the need for specialized equipment or for skilled craftsmen not available in the Carrier's own forces may justify "farming out" of work. We find no basis upon which to apply that principle here.

The Carrier contends that a sustaining award in this case would deny to it the right to purchase manufactured products complete. Under the facts as they appear in this case that contention is untenable. Here the Carrier had already bought the manufactured article and sent it back to the factory for the performance of additional work, of a type traditionally performed by its own employes, in order to meet its own peculiar needs and specifications. It is difficult to conceive of any distinction between that action and securing the work to be done by an outside contractor not engaged in the manufacturing business.

It follows from the above that it was a violation of the Agreement to let out the work involved in fitting up and wiring the five bungalows to the General Railway Signal Company. We find no conflict between this conclusion and the conclusions reached in Awards 5044 and 4662. The facts in both those dockets were inapposite to those here involved. As a matter of fact, the views expressed in the Opinion of the Board in Award 5044 are quite in harmony with the result reached here as is manifest from the following quote: "We quite agree that if the equipment has been delivered to the Carrier in such a manner that the rights of claimants under the scope rule attached, that a contracting of the wiring and assembly of the unit would then be a farming out of work belonging to these employes."

The claim will be sustained at the respective hourly rates on the pro rata basis on behalf of the Signal Department employes on the Illinois Seniority District who would have performed the claimed work for the number of hours equivalent to the time spent by the General Railway Signal Company employes in the performance of the claimed work.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated.

AWARD

Claim sustained to extent indicated in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.