# Award No. 8050
# Docket No. SG-7976

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Marion Beatty, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

## THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated the Signalmen's Agreement dated December 21, 1945, effective February 1, 1946, when on or about November 1, 1952, it improperly assigned signal work covered by the Scope Rule and other provisions of the Signalmen's Agreement to employes not covered by the Agreement, during the installation and testing of signals, power operated switch, radio control apparatus, their appurtenances and appliances at Carlsbad, New Mexico.

(b) Signal employes who were assigned to Signal Gang in charge of Signal Foreman H. L. Brantley be compensated at their respective rates of pay for a number of hours equivalent to the number of hours the Communications Department Employes were assigned to install and test the wayside radio control apparatus and appliances used in the control circuits of the signals, and power operated switch installed at Carlsbad, New Mexico.

OPINION OF BOARD: Before proceeding to consider this case on its merits we have a procedural and jurisdictional question. Every court or administrative agency, such as this Board, must first observe its jurisdiction and it should not purport to decide matters outside its jurisdiction. If it does decide such matters without proper jurisdiction its decision is invalid and may be set aside for naught by the proper court.

The Carrier members of the Board contend that a third party is involved and that under Section 3 First (j) of the Railway Labor Act (45 U S C 153, First (j) ) this Board has no jurisdiction to proceed in this matter unless and until the third party is given due notice of hearing in accordance with the section. At an earlier stage in these proceedings the Carrier members of this Board moved that notice be given to the third party, but the motion failed for want of a majority. They now reassert the contention before this Referee sitting as a member of the Division.

It is self evident that if we sustain the contention of the Signalmen in this case on its merits that work now being performed by Communications

Department Employes, represented by the International Brotherhood of Electrical Workers, will in the future be lost by the latter craft. These employes have not written any letters or filed any application or motion to intervene in this matter. To complicate matters further they are under the jurisdiction of another Division of this Board.

Our first question is, "Are the Communications Department Employes represented by the I.B.E.W. 'involved' as the term is used in the Act?"

The Act does not refer to "interested parties" or "necessary parties" and it makes no provision for intervention of parties as do all codes of Federal and state procedure and no specific provisions for settling the claims of all parties in one proceeding.

It does not follow that every time some third party is mentioned that a third party is involved but our Federal Courts of Appeal have discussed the matter many times and they are in substantial agreement that employes sought to be ousted from their jobs have a right to notice and an opportunity of participating in the hearing (M K & T R Co v. Brotherhood of Ry & S S Clerks, 188 F2d 302 (C A Ill 1951)); that every person who may be adversely affected by an order of the Railroad Adjustment Board should be given reasonable notice (Hunter v A T & S F Ry Co, 188 F2d 294 (C A Ill 1951), certiorari denied 342 U S 819, 72 S Ct 36, 99 L Ed 619, rehearing denied 342 U S 889, 72 S Ct 172, 96 L Ed 667.); that employes sought to be ousted have a vital interest in the proceedings and a right to notice and an opportunity to participate in the hearing before the Board, and without such notice the award is void. (Order of R R Telegraphers v New Orleans, T & M Ry Co. 229 F2d 59 (CA Mo 1956) certiorari denied 350 U S 997, 76 S Ct 548, 100 L Ed 861).

The Supreme Court of the United States has never held anything clearly to the contrary and these propositions stand as valid principles of law as of the present time.

In the Whitehouse case (Ill Central R Co v Whitehouse, 212 F2d 22 (C A Ill 1954) reversed in 349 U S 366, 75 S Ct 845, 99 L Ed 1155, modification denied 350 U S 811, 76 S Ct 37, 100 L Ed 727), on which the labor members rely, Justice Frankfurter, speaking for a majority of the U S Supreme Court, made some observation in regard to the problems involved in the third party notice but decided none of them. He did make some comments that justified some doubts. However, his opinion and decision disposed of the matter on the narrow ground that the Carrier took its case to court prematurely, before exhausting its administrative remedy. Nothing more was decided.

Since that time the Eighth Circuit in 1956 (Telegraphers v New Orleans case cited above) has reiterated the principles of law stated above and the Supreme Court has refused to review this decision by way of certiorari. It therefore stands as law on the subject.

We concur in Award 8022 by Guthrie as a correct analysis of the present state of the law.

We conclude that there is a genuine third party interest and a third party "involved" in this case and that this Board is without jurisdiction to proceed further without first giving notice as required by Section 3 First (j) of the Railway Labor Act and that any award without it would be void and enjoinable.

Spokesman for the Labor members has requested the Referee, in case he should find that a third party is to be notified, to state just what may be accomplished by the intervention of a third party who works under a different contract and who is subject to the jurisdiction of another Division of this Board.

The request is a fair one. It points up some of the practical problems involved and perhaps some deficiencies of the Act. Admittedly this Board cannot modify or renegotiate the two contracts even if they do overlap. It is possible for both contracts to cover the same work. If so it will not be the first time a gentleman betrothed to one lady has found himself unable to fulfill his rash commitments to another. Perhaps this Division cannot give a binding interpretation of the third party contract. Perhaps congress is in a better position than we to come up with an answer to these practical problems.

The Labor Member's question can best be answered though by quoting from the latest court opinion, that of the Eighth Circuit in Telegraphers v New Orleans (cited above);

> " 'Obviously it is desirable to settle controversies such as these involving so-called "overlapping contracts" on the basis of the existing contracts wherever possible instead of compelling resort to the machinery provided by Sec. 6 for changing agreements. Of course this may not always be possible, but it is certainly much more likely to result if both parties to the dispute are brought before the Board with their respective agreements and each is considered in the light of the other, together with the usage, practice and customs of the industry, or of the particular carrier.' "

**FINDINGS:** The Third Division of the Adjustment Board 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 a third party, the Communications Department Employes represented by the I.B.E.W., are "involved" as that term is now being interpreted by our Federal courts and that this Board has no jurisdiction to proceed without giving due notice to them as required by Section 3, First (j) of the Railway Labor Act.

AWARD

Claim is held in abeyance until proper notice is given to the Communications Department Employes represented by the I.B.E.W. so they may appear and be represented in this proceeding, if they so desire, or until the matter is settled on the property by all the parties involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1957.