Award No. 8070
Docket No. SG-8141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

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

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

(a) The Carrier violated and continues to violate the Signalman's Agreement effective February 1, 1946, when on June 4, 1951, it unilaterally removed from the Signalmen's Agreement the signal work of maintaining and repairing signal appurtenances and appliances (specifically, hump yard air compressors and blow down boilers' at the Argentine Hump Yard, Argentine, Kansas, and caused the signal work involved to be performed by its mechanical department employes.

(b) The signal work covered by the Scope Rule and other provisions of the Signalmen's Agreement, as defined in part (a) of this claim, be restored to the Signal Department employes holding seniority rights under the Signalmen's Agreement.

(c) That all Signal Department employes who were at that time assigned (either regular or temporary) to the Argentine Hump Yard maintenance territories be proportionately compensated at their respective overtime rates for all time consumed by the mechanical department employes in maintaining and repairing the signal appurtenances and appliances as defined in part (a) of this claim.

EMPLOYES' STATEMENT OF FACTS: The car retarder system, of which the air compressors are a part, also the blow down boilers, including their appurtenances and appliances, were first put into service at the Argentine Hump Yard, Argentine, Kansas, in April 1949, at which time the maintenance, repair, and operation of the retarder system, of which the air compressors are a part, also the blow down boilers, including their appurtenances and appliances, was assigned to the employes of the Signal Department covered by the Signalmen's Agreement.

On June 4, 1951, the Carrier unilaterally removed from the Signalmen's Agreement signal work which had previously been assigned to and performed by signal employes located at the Argentine Hump Yard and assigned it to

The Carrier has overwhelmingly demonstrated that the work here contended for by Signal employes is not Signal work. Although the awards of the Board, defining the jurisdiction of the Board, are too numerous to mention, Third Division Award No. 4452, dated July 12, 1949, with Referee Edward F. Carter, does it with a brevity worthy of mention, in these words:

> "There must be an agreement with reference to the work before this Board has jurisdiction to act, this Board being solely an interpreting agency under the law creating it."

The Employes had an opportunity to negotiate for the work incidental to the operation of Hump Retarder Yards, during the negotiations which led to the adoption of the Signalmen's Agreement, effective October 1, 1953. They did not avail themselves of this opportunity.

In conclusion the Carrier respectfully requests that because this case is not properly before the Board for reasons which have been exhaustively gone into herein, that it be dismissed in its entirety for a restatement and resubmission of the claim, if desired by the Employes, in such terms as will permit an understanding of what it is they are contending for, in the face of the fact that the collective agreement has never included Hump Retarder Yard appliances and appurtenances for the very good reason that such facilities have never been the subject for collective agreement negotiation between the parties to this dispute.

All that is herein contained has been both known and available to the Employes and their representatives.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD:

Question of Procedure

The Carrier contends that this is another case involving third parties and that the matter is not properly before the Board until Section 3 of the Railway Labor Act (45 U.S.C. 153, First (j) is complied with, which section requires that the "several Divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any dispute submitted to them."

At an earlier state in the proceedings, the Carrier members of the Board moved that notice be given to the third parties involved, but the motion failed for want of a majority. They now reassert the contention before the Referee sitting as a member of the Division.

We will first take up this question of procedure. We adhere to the general principles which we adopted in Third Division Award No. 8050 by the same Referee, except we believe that this whole question of third party notice should be referred to as a procedural question rather than a jurisdictional question. We believe the term "procedural" is more accurate.

In that Award we reached the conclusion that under the present state of the law, including the latest decisions of the highest Federal Courts, where a genuine third party interest is involved in a case, due notice must be given to the third party; otherwise, the award is subject to challenge in the courts as being invalid and unenforceable.

In the case at hand, we have heard the procedural arguments and also the evidence on the merits. We are satisfied that the claim should be denied on its merits. We can dispose of it thusly without adversely affecting the interests or rights of any third parties.

What should we do under the circumstances? Should we go through the gesture of notifying the third parties who claim the same work, who are

now doing it and being paid for it, but whose interests will not be adversely affected by denial of this claim? This seems unnecessary and impractical for an administrative agency such as this Board. We have chosen what appears to us to be the practical course. If it is error it is harmless error and no one is hurt or in a position to complain.

We believe this Board has the necessary jurisdiction of the subject matter and the two parties who are going to be affected to make this award binding upon them. (See U. S. Supreme Court decision in the Whitehouse case: **Illinois Central R.R. Co. v. Whitehouse**, 212 F 2d 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 and **Order of R.R. Telegraphers v. New Orleans, T. & M. Ry. Co.**, 229 F. 2d 59 (C A. Mo. 1956) certiorari denied, 350 U. S. 997, 76 S. Ct. 548, 100 L. Ed. 861.)

Statement of Facts

We will proceed to deal with the case on its merits. The facts are as follows:

The Carrier installed its first car-retarder system at Argentine, Kansas, in 1949. It is an electro-pneumatic type, i.e., compressed air is used to operate the retarding mechanism. The compressed air is stored in tank reservoirs after it has been generated by air-compressors which are driven by electric motors.

The air-compressor plant was installed in one of the rooms of a service building which had been constructed within the Hump Yard. The Carrier's Shop Extension forces installed the power plant, which consisted of the air-compressors and tank reservoirs.

The Carrier considers the work to be covered by Rule 83 (Classification of Sheet Metal Workers' Work), Rule 52 (Classification of Machinists' Work), Rule 92 (Classification of Electricians' Work) and Rule 63 (Classification of Boilermaker Helpers' Work) of the current Shop Crafts' Agreement, effective August 1, 1945. The spokesman for the Signalmen points out that this is irrelevant and immaterial in determining whether this work may also be embraced within their Agreement.

The Signalmen's forces installed the remainder of the car-retarder system including all the work in connecting the air lines leading from the tank reservoirs to the cylinders which operate the retarding mechanism.

The original installation required the starting and stopping of the air compressors by manual control. The compressors are housed in the same service building with the Repair Shop for Signalmen assigned to the Hump Retarder Yard. Signalmen performed the "running maintenance" of the air-compressor system, although the Power Plant Supervisor, a mechanical department supervisory employe, was charged with the over-all supervision of their operation. The Carrier says the reason that such an arrangement was made was that the machinery required frequent attention in the period following its installation and the Stationary Engineers and Firemen, Machinists, Water Service Repairmen and Boilermakers, all of whom are under the Shop Crafts' Agreement, were located a mile away at the Main Power Plant and that as a matter of expediency, the Carrier assigned the "running maintenance" of the machinery to the Signalmen because they were right at hand to perform such work.

The Signalmen performed the "running maintenance" work from May 9, 1949 until June 3, 1951. During this period they had to call upon the Power Plant Supervisor to furnish Machinists and Water Service Repairmen to make other than minor repairs.

Commencing March 7, 1951, the Carrier's Electricians, under the supervision of Shop Extensions Engineer, installed a 2300-volt electrical control

panel in the service building for the purpose of changing the operation of the air-compressors from manual to automatic control. This work was completed on March 23, 1951.

The original air valves which the manufacturer of the machinery had supplied and which required a great deal of work because they were defective in design, had been replaced with a new, improved valve, which was trouble-free. Upon the conversion of the operation from manual to automatic, the "running maintenance" of the machinery was reduced to the point where only one inspection each 24 hours was necessary. Effective June 4, 1951, the Carrier assigned the operation and maintenance of the machinery to the employes of the Mechanical Department.

On June 18, 1951, the Local Chairman filed a claim with the Carrier's Superintendent. The gist of the claim is a protest against the Carrier's assigning the maintenance of the air-compressors and blow-down boilers to the employes of the Mechanical Department. He petitions for a restoration of this work to the Signalmen and for compensation at the penalty overtime rate to the Signalmen for all time spent by the Mechanical Department in maintaining and repairing the machinery and boilers. The claim was denied at the initial stage and appealed eventually to the Carrier's Chief Operating Officer designated to handle such appeals.

While the matter was being discussed in conference early in January, 1954, the Vice-President of the Organization admitted the boiler room equipment work had no relationship to signal apparatus.

The parties have been unable to agree and the claim received a final denial on October 19, 1954. The Organization served its written notice of intent to file an ex parte submission before this Division on September 14, 1955.

Merits of the Case

The position of the Brotherhood is that the Carrier violated its Agreement, after allowing the Signalmen to do maintenance and repair work on the boilers and compressors used for powering the car-retarder system in the Argentine Hump Yards for twenty-six months, by then unilaterally transferring the work to other crafts, and that the boilers and compressors, particularly the compressors, are an integral part of the car-retarder system and are constructed and used primarily for supplying air to the car-retarder system.

The Brotherhood believes that its Scope Rule cited above in its submission reserves to it the maintenance and repair of these appurtenances and appliances and that they are work generally recognized as signal work.

Signalmen never did **all** maintenance on the equipment in question and their case does not show clearly just how much of it they are claiming now.

It will be observed that the Scope Rule in this case does not mention car-retarder system or its motivating power, i.e., the boilers or air-compressors. When the current Agreement was entered into, February 1, 1946, none of these were in use or in construction and there were no car retarder systems, therefore, at that time the work claimed could not possibly have been "generally recognized as signal work."

Since then, true, for twenty-five months Signalmen did most of the work claimed here but it was management's responsibility to assign it to someone initially, and the assignment under the circumstances in this case does not unequivocably commit management forever so that the work becomes the exclusive property of the first one to perform it. Management may still exercise its discretion in the matter until that right is bargained away or becomes clearly committed by the catch-all provision of the Scope Rule.

Until that time, management may assign it as it sees fit to any one or several.

The Carrier maintains that Signalmen have no exclusive claim to work on boilers and air-compressors, i.e., work on the source of power for the car retarders back beyond the "point of utilization." This appears to us to be a sensible dividing line.

(See Awards 6904 and 6937 (Coffey), 6270 (Smith), 7031 (Carter), and 4356 (Robertson).)

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 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 evidence in this case does not show a violation of the working Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1957.