

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 (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 employees 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 employees 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 Employees 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.

EMPLOYEES' STATEMENT OF FACTS: On or about November 1, 1952, the Carrier commenced work on the installation of signals, radio control apparatus, and power operated switch at Carlsbad, New Mexico.

The Carrier improperly assigned to employees of the Communication Department, who hold no seniority rights under the Signalmen's Agreement, the signal work involved in the installation and testing of the wayside radio control apparatus and appliances used in conjunction with and which is an integral part of the controls and circuits of the signals and power operated switch at this location.

In the past, the installation and testing of all signals, power operated switches, including their appurtenances, and appliances has been performed by signal employees. Furthermore, this type of work is covered by the Scope Rule of the Signalmen's Agreement. The claimants have established seniority under the Signalmen's Agreement; therefore, it reserves to them the right to perform all signal work covered by the Agreement.

The practice of controlling functions by radio has always been considered a communication function. The Bell Telephone Company furnishes such control systems to oil companies and other users under its franchise as a communication common carrier. Such radio signals, when used for this purpose rather than for voice communications are known to the communications industry as telemetering. That is the classification in which the installation herein in dispute falls.

Carrier meticulously observed the line of demarcation between Signal Department work and that of the Communications Department in making this installation. As stated in its Statement of Facts, Carrier's Communications Department employees installed only the receiving set and antenna in the Signal Department relay house and tested those facilities after their installation. Its Signal Department employees performed all other work in connection with this installation, including the connections between the radio receiver and the Signal Department relays.

In conclusion, Carrier states that:

1. Its employees represented by the International Brotherhood of Electrical Workers have by reason of the historical, traditional, customary and usual performance of all types of radio work on this Carrier's Property since its earliest appearance thereon are a vitally interested third party to this dispute and as such are entitled to notice of its pendency as required by Section 3, First (j) of the amended Railway Labor Act and in the absence of such notice, this Board cannot render a valid award in the instant dispute.

2. The Scope Rule of the Signalmen's Agreement, effective February 1, 1946 makes no reference whatever to radio work. That rule was negotiated and accepted by both parties herein involved effective June 1, 1939, years before radio work of any kind made its appearance on this Carrier's Property and therefore could not, by any stretch of the imagination, have included radio work in its coverage. Moreover the radio controlled switch installed at Carlsbad in 1952 was the first installation of its kind on this Carrier's Property and was unheard of at the time the Scope Rule herein involved was first adopted in 1939 and readopted in 1946.

3. The radio receiver and antenna herein involved are not an integral part of the signal installation, as contended by the Employees but, to the contrary, are an inseparable and component part of the communications system installed under Federal Communications Commission License No. KB 9279 at Carlsbad.

Carrier respectfully requests this Board to either dismiss or deny the Employees' claim in its entirety, for the reasons herein expressed.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In our Award No. 8050, dated August 2, 1957, we found that a third party, namely the Communications Department Employees, represented by the I.B.E.W. were "involved", and held that under the present state of the law, as interpreted by the Federal courts, the third party would have to be given due notice and opportunity to be represented in the proceedings before we could render a valid award.

Subsequently, due notice was given, another hearing was held, but the third party, the Communications Employees, failed to appear or be represented and they contributed nothing to the solution of the controversy.

We having met the procedural requirements, will now consider and dispose of the Signalmen's claim on its merits.

The question to be determined is whether the Signalmen's agreement reserves to them all or any part of the work in question. We find that the work in question is 28 hours of actual installation and testing of a wayside radio receiving set and antenna to receive radio impulses which actuated relays and causes power to be applied to the switch.

Connecting the above described equipment to the other standard signal equipment in the relay house and at the site of the switch is not in question, for this was assigned to and done by Signalmen. Installation and testing of the transmitting equipment, a sending device known as a "Pakset" located in the cab of the locomotive, is not being claimed by the Signalmen.

Signalmen claim that the wayside radio receiver and appurtenances in the instant case perform the same service as a metallic circuit and is for the sole purpose of controlling the switch, and therefore their installation must be considered as signal work under the working agreement.

The Carrier points out that the agreement does not contain the word "radio", that Signalmen never before installed a radio, that the Carrier has bargained with another craft to do work on radio and that it is an awkward arrangement for one craft to install a transmitter and another craft to install the receiver, and that no such arrangement was ever within the contemplation of the parties. We have considered these points seriously.

The scope rule of the Signalmen's agreement reads as follows:

"This agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, centralized traffic control, automatic highway crossing protective devices, including all their appurtenances and appliances, or perform any other work generally recognized as signal work."

We believe the above language means to embrace work on all wayside appurtenances, appliances, parts or devices which serve to operate and control switches, that the language is broad and recognizes no exceptions.

True, the language does not mention "radio", for radio was not yet known as a device for controlling switches. The rule is broad and there is nothing in it which excepts new and novel devices, or which implies that an exception was contemplated, or reserves to management the right to make exceptions when new devices, parts or methods are introduced into signaling, or when management considers another craft to be more adept in installing new devices, or when management bargains with someone else in regard to them.

Even though it was a new appliance, part or device borrowed from another craft the radio receiver was installed in the relay house on the wayside, along with and connected to conventional signal apparatus as an integral part of the switch control.

Note that the purpose of the radio receiver was not for reception of voice, music, entertainment, or communications, the more common and conventional use of radio.

This Division has held many times that the general class, character and purpose of the work as a whole and the reason for doing it, rather than the manner, method or detail of the performance or the nature of its component parts, are persuasive in determining the type of issue we have here. (See Awards Nos. 864, 2819, 4754, 6214, 7349 and others.)

Applying the above test we reach the conclusion that the work was signal work and embraced within the agreement.

There is no claim that Signalmen were not competent to make the installation.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim should be sustained.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of January, 1958.

DISSENT TO AWARD NO. 8217, DOCKET NO. SG-7976

In Award 8050, with the same Referee participating as herein, we found that the Employees represented by both the Signalmen's and Electrical Workers' Brotherhoods were "involved" in this dispute. Carrier's Exhibit "E" shows that the Signalmen's Brotherhood was on record as stating that the only settlement to which Signalmen would be agreeable "must be by full capitulation of the IBoFEW". Carrier's Exhibit "F" shows that the Electrical Workers' Brotherhood was on record as stating that, since this work has been assigned to Electrical Workers in accordance with their Agreement they would "protect the interest of Electrical Workers in accordance with the provisions of the Railway Labor Act as amended" if this work is taken from them and assigned to other employees.

In the face of these conflicting claims to the same work from these two Brotherhoods, clear and unambiguous language in the Signalmen's Agreement was requisite in order for us to properly sustain their claim for exclusive rights thereto.

In Award 8217, the majority evaded its responsibility in this respect and, without identifying any specific language, sustained the claim under the Scope Rule of the Signalmen's Agreement on the basis that the language thereof "is broad and recognizes no exceptions".

In construing a comparable rule in Award 5028 (Referee Parker), which was cited in the record and involved the testing and repair of search light signal relays, we held as follows:

"At the outset it must be conceded the general rule is that scope rule as broad as the one here in question reserves all work historically, traditionally, customarily and usually performed by the employees covered by its terms. Needless to say its converse is that work not possessing such characteristics is not within the terms of the Agreement. We doubt that work so highly specialized as that here involved can be held to be work that has been historically, traditionally, customarily and usually performed by signalmen."

On the basis of the general rule referred to in Award 5028, this Division should have denied the claim in Award 8217 because admittedly Signalmen never had performed and Electrical Workers always had performed radio work on this Carrier.

The majority herein state as follows concerning the Scope Rule of the Signalmen's Agreement:

"True, the language does not mention 'radio', for radio was not yet known as a device for controlling switches."

By this statement, the majority correctly recognizes that radio was not contemplated by the signatories to the Agreement and past practice under the rules on this property should have been controlling.

In Award 6207 (Referee Shake), also cited in the record, we held as follows:

"Under the terms of the Scope Rule the burden is on the Organization to establish that that part of the installation performed by E. & E. and E. T. employes in the instant case, has been generally recognized as telegraph, telephone or signal work. This burden, in our judgment, the Organization has failed to satisfactorily discharge."

The Carrier showed that the radio installation involved in Award 8217 was not a signal installation, and denied that it took the place of a metallic circuit. On the contrary, it showed that it was an integral and necessary part of a Communications Department's installation under License No. KB-9279 of the Federal Communications Commission, which Commission does not license signal installations; that the radio receiver was not installed as a necessary adjunct to the operation of the switch; that the signal installation in and of itself had all the metallic circuits necessary for its operation, and that the radio installation was simply something extra added thereto in order to expedite its service and took nothing away from its signal employes.

For the above reasons Award 8217 is in error and we dissent. An award of this character increases the difficulties confronting carriers in their struggle for survival.

/s/ W. H. Castle

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp