

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway (Chesapeake District) that:

(a) The Carrier violated the Scope of the Agreement bearing an effective date of August 16, 1946, as amended and reprinted, between this Carrier and the Brotherhood when, starting about January 26, 1955, and continuing through to about March 3, 1955, the Carrier assigned workers not covered by the Signalmen's Agreement to perform Scope work on motors used to compress air for the operation of a car retarder system at Stevens, Ky.

(b) The Carrier compensate the members of the Cincinnati Division Signal Gang for an equal number of hours consumed by other workers at the time and one-half rate. [Carrier's file SG-93 ½.]

EMPLOYEES' STATEMENT OF FACTS: At the time of the improper diversion of Scope work, this Carrier's Signal Department employees were constructing a car retarder system at Stevens, Kentucky.

The work improperly diverted was a component part of the car retarder system consisting of the wiring of two 75 horse-power 440-volt motors which were installed to provide power in the form of compressed air to operate the car retarder system such as car retarder units and power operated track switches.

The primary purpose of these air compressors is to operate the car retarder system. Use of the compressed air for other purposes is only incidental and constitutes only a small fraction of the compressed air produced.

The diverted Scope work involved in this case did not require special skills, special equipment, or special materials.

In summation, the Carrier has shown that the claim is without merit and should be denied because:

1. The claim is not supported by Agreement rules.
2. A sustaining award would infringe and nullify rights of another craft.

All data submitted have been discussed in conference or by correspondence with the employe representatives who have made ex parte submission in this case.

OPINION OF BOARD: The matter here before the Division is the same as was involved in Award No. 9082, Docket No. SG-8480, except that in the foregoing Award, the merits of the claim were not considered by the Division. Such award required the Division to notify third parties, who may or may not have their rights adversely affected by a sustaining award herein. Such third parties having been given proper notice by the Division, the claim is before us for award on the merits.

The claim here is on behalf of members of the Cincinnati Division Signal Gang, for pay for an equal number of hours consumed by workers of another craft at the one and one-half hourly rate of pay, for failure by Carrier to use claimants to perform work, alleged as Scope work on motors used for air compression on a car retarder system at Stevens, Kentucky.

The Scope Rule before us provides as set out in Rule 1 of the effective Agreement, as follows:

“* * * highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, **car retarder systems**, including such work in signal shops, * * *.”
(Emphasis supplied.)

Carrier contends that in constructing its car retarder yard, involved here, it constructed a building to be used for shop facilities for signal maintenance forces, foundations for air compressors and car retarders were constructed by Signalmen forces. That the labor required in wiring the two compressor motors of 75 H.P. each, was performed by employes of the Electrical Workers craft. Such motors installed were to be used to operate air compressors necessary for operation of the car retarder system. This was the primary purpose for installation of the 75 H.P. motors. Carrier urges that the Scope Rule here, in no way provides for electrical wiring of motors as alleged by the employes. Carrier further urges that the wiring of the motors involved here are of a type not normally handled by claimants and that it was justified in using Electrical employes to wire such motors.

While we are not called upon to interpret the provisions of the Electrical workers agreement, we have no authority to do so in making a determination of the record and facts before us. The record here shows that the Agreement before us provides in the Scope Rule for the maintenance, repair and construction of signals, “* * * car retarder systems, * * *.” While the Scope Rule itself is general in character, we cannot agree that such rule is ambiguous or that past practice may lessen the effectiveness of a provision of the Agreement, where there are no exceptions or modifications contained in the Rule involved.

We must conclude that the claim as filed here was proper, as provided by the provisions of the Scope Rule. There is nothing contained in the Scope Rule, which limits in any manner the size, capacity or installation of electric motors, such as were installed at Stevens, Kentucky. No exception is contained in the Scope Rule covering such installation as urged by Carrier. The installation of the motors and compressors here involved are an integral part of the construction and operation of the car retarder system as described and provided in the Scope Rule.

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 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 claim is supported by the record and should be sustained.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1960.

DISSENT TO AWARD NO. 9210, DOCKET NO. SG-8480

The Carrier Members dissent to the conclusions of the Majority in this Award 9210 because:

The governing Signalmen's Scope Rule provides,—

“This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair, and construction of * * * **car retarder systems, including such work in signal shop, and all other work generally recognized as signal work.** * * *” (Emphasis added.)

and has been wrongfully construed by the Majority as giving Signalmen the exclusive right to wire two 75 hp., 440 volt, motors connected to two air cooled compressors, each producing 875 rpm with pressure of 100 lbs., after they had been installed in the compressor room, in signal shop building, to provide compressed air for operation of new car retarder system at Stevens Yard, Ky.

The Majority properly recognizes this Scope Rule to be general in character, but then erroneously ignores Carrier's showing of prior practice on the property thereunder, which this Division has universally held to be controlling, to have its Electricians by reason of their earlier negotiated Scope Rule,—

"Electricians' work shall consist of maintaining, repairing, re-building, inspecting and installing the electric wiring of

* * *

4. Motors and controls, * * *". (Emphasis added.)

wire motors operating air compressors that power its car retarder systems—at Walbridge, Ohio, and Russell, Ky.—and, also, other high-powered motors at Newport News, Va., Fulton, Richmond, Va., Clifton Forge, Va., Rainelle, W. Va., Handley, W. Va., Huntington, W. Va., Russell, Ky. Parsons, Ohio.

The Majority declined to recognize the earlier negotiated Electrician's Scope Rule, and improperly so far it is a matter of public record evidencing that wiring of motors has been contracted for on this property, by its Electricians (**Award 8381—Vokoun**). Had the Majority properly recognized the Electricians' right to wire motors, even with its conclusion that the Signalmen's Scope Rule also gave them a similar right, then, at most, this claim should have been denied on the principle outlined in **Award 7031 (Carter)**,—

"Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent."

The Majority, illogically, has chosen to ignore this Board's prior line of demarcation as to the rights of Signalmen vs. Electricians with respect to electrical work involving signals and their appurtenances,—that Electricians are entitled to work on the source of power back beyond the point of utilization, and that Signalmen are thereafter entitled to it (**Awards 8070—Beatty; and 8288, 8291—Bailer**)—, which is most sensible and sound.

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. F. Mullen

ANSWER TO DISSENT OF CARRIER MEMBERS IN AWARD 9210,

DOCKET SG-8480

Anyone familiar with the record in Docket SG-8480 will immediately recognize that the foregoing dissent, by the use of carefully selected phrases and adroit placement of emphasis, does not fairly represent the entire factual situation of the case. Those not familiar with the case, but interested, will do well to study the whole record and thereby discover that the decision of the majority is neither erroneous nor illogical as alleged by the minority.

/s/ G. Orndorff