

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

The Carrier violated and continues to violate the Signalmen's Agreement when the Signal Maintainer's territory with headquarters at London, Kentucky, was changed by the addition thereto northward to Donara, Kentucky, and the work taken off the Cincinnati Division Maintainer by the agreement between the Director of Personnel and the General Chairman, dated February 17, 1939, was not reassigned to the Cincinnati Division.

**EMPLOYES' STATEMENT OF FACTS:** Under date of January 24, 1934, Assistant Director of Personnel T. B. Turner wrote General Chairman W. H. Hyatt, as follows:

"Because of the abolishment of the Nashville Division and the Memphis Division, we find it necessary to rearrange the seniority districts for Signal Employees, as covered by Rule 34, so as to include the trackage of the superintendents' divisions, and as follows:

- "1. The name of the Kentucky Division changed to the Cincinnati Division and to include the Cincinnati Terminals and the line Cincinnati to Corbin, Paris to Maysville, Cincinnati to Louisville Terminals and City Limits, mile T-4 plus 3320 ft.
2. Eastern Kentucky Division extend Lexington to Paris, Lexington to LaGrange, Christiansburg to 'HK' Tower — Anchorage — and including the Bloomfield Branch.
3. Cumberland Valley and Knoxville & Atlanta Divisions, no changes.
4. Cincinnati Terminals and the L.C. & L. Division, Cincinnati to Louisville City Limits m.p. 4 plus 3320 ft., absorbed by the Cincinnati Division.

The CTC machine referred to is noway connected to the Cincinnati Division. While it is located on carrier's right-of-way, it controls only the operation of signals on the Cumberland Valley Division. In the agreement of June 1, 1934, no attempt was made to describe the boundary of the Cincinnati Division by metes and bounds as a city lot might be described. In other words, the description would not enable a surveyor to draw a line enclosing everything within the seniority district. Instead, the description is in terms of distances along certain railroad lines and branches, with no indication as to how far to the right or left of the railroad line the seniority division might extend. This type of description used is well adapted to railroad business. This apparent exception to the usual way of understanding the description of a boundary may not follow geographical logic, but it follows "railroad logic." In other words, the parties to this agreement did not intend to disrupt the running of trains by technicalities of map-making. As in practical everyday speech, so in this agreement, those things that are attached to the Cincinnati Division for purposes of operation are a part of the Cincinnati Division, and those things that are attached to the C.V. Division are a part of the C. V. Division; just as the leaf of an oak tree is part of the oak tree even though it is closer to the trunk of a nearby maple tree.

It is, therefore, our position that the CTC machine belongs solely to the C. V. Division and that employees who work on this machine should be C.V. Division and not the Cincinnati Division forces. (Carrier calls attention to Exhibit "DD" attached, showing location of CTC machine in color (green) for Boards' information.)

Prior to the 1934 and 1939 agreements, the K&A signal maintenance forces maintained equipment in the passenger depot. This equipment consisted of reset apparatus for train control substation. This controlling equipment has been maintained by the K&A signal department employees since 1925. A track circuit just south of the passenger depot also was considered a part of K&A maintenance. These appurtenances were never considered as being subject to maintenance by Cincinnati Division forces. It was apparently accepted by all concerned that such work belonged solely to the K&A Division. Signal 1722 (high line signal) governed movements of freight trains to the Cincinnati Division and the 1864 feet south of Mile 172, referred to in agreement of 1934, was established in order to include this signal. It is the carrier's position that the distance 1864 feet south of Mile 172 refers to track governed by the high line signal.

The carrier submits that in view of all the circumstances, claim should not be sustained.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On or about February 25, 1939, Carrier and the Organization entered into an Agreement, as an amendment to the 1929 Agreement there in full force and effect. This was brought about by the desire of Carrier to effect some changes in seniority districts, as was contemplated by Carrier, and which would result in the necessity of revising Rule #34, of the 1929 Agreement. The parties agreed between themselves on the changes and a revision of Rule No. 34 became effective June 1, 1934, changing such seniority districts.

This arrangement was satisfactory to the parties until January 24, 1939. Carrier desired to make a further change in the seniority arrangement, by establishing an additional signal maintainer position at Corbin, Kentucky with

the requirement that a portion of the duties of the new position would include certain duties then being performed by the signal maintainer whose headquarters were designated as London, Kentucky. By letter to Carrier on February 16, 1939, the General Chairman agreed to the proposed change suggested by Carrier at Corbin, but in addition advised Carrier that any further changes in the K. & A. or the Cincinnati Division seniority districts would nullify the above agreement and would revert back to the 1934 seniority district agreement. Such understanding was acceptable to Carrier, by its letter of February 17, 1939.

On March 1, 1939, Carrier by letter to the Signal Maintainer at London, put in effect certain changes in the territory assigned this maintainer, as agreed to by the General Chairman.

The record here shows that a new Agreement was negotiated between the parties, effective February 16, 1949, as revised to October 1, 1950. Among changes in the new Agreement, Rule No. 32, was negotiated and provides as follows:

"SENIORITY DISTRICTS — Each employe will hold seniority on one district only. The districts as now established shall not be changed except by agreement, and are as follows:"

Districts one through eight are specified in the new Rule.

On September 26, 1955 Carrier issued its Bulletin No. 75, effective October 3, 1955, which brought about abolishment of positions at Livingston and Walton, Kentucky, and also involved a change in territory at London, Kentucky, by extending the maintainers territory north to include signal 1491, at north end of Donara.

From this action by Carrier, protest was filed by the Organization who take the position that Carrier by its action, had violated the agreement of February 1939, by making such changes and made null and void such territory changes and that such territory now changed should revert to the Cincinnati Division as covered by the 1934 seniority district agreement. It is from this protest by the Organization that the matter has been brought to this Board and the Organization requests that Carrier be required to restore the territory taken in 1939 including the signal fixtures in the north end of Corbin Yard, to the signal maintainer at London, Kentucky, as provided by the 1939 Agreement.

Carrier contends that the protest is not well taken by the Organization, and that in view of the provision of Rule 32 of the current agreement between the parties, effective February 16, 1949, such agreement supersedes all previous agreements as applicable here, and that Rule 32 governs the protest as made here. Carrier denied the allegations made by the Organization on March 12, 1956. See record.

We have reviewed the record here before us including the many letters exchanged between the parties. We can find no evidence here that the 1939 Agreement was merged into the provisions of the 1949 Agreement. We cannot agree with the Organization in its contention that the agreements of 1934 and 1939 remain in effect since the Agreement of 1949 does supersede all prior Agreements unless otherwise agreed to between the parties. Nothing is contained in the 1949 Agreement that contains any provision for the re-

tention of such agreements as argued here by the Organization. Carrier has complied with the provisions of Rule No. 32.

The protest by the Organization is not supported by the record here and is without merit.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees 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 protest should be denied.

#### AWARD

Claim denied in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1960.

#### DISSENT TO AWARD NO. 9500, DOCKET SG-9401

The majority, i.e., the Referee and the Carrier Members, err, first in finding that "On or about February 25, 1939, Carrier and the Organization entered into an Agreement, as an amendment to the 1929 Agreement there in full force and effect. \* \* \*". As disclosed by the record, what the Carrier and the Organization did on or about February 25, 1939, pertained solely to the seniority districts rule adopted by the parties effective June 1, 1934, which amended the seniority district rule of the 1929 Agreement to the extent of reducing the number of seniority districts and spelling out in detail the limits of the new districts.

Serious error has been committed by the majority in finding that "\* \* \* Carrier has complied with the provisions of Rule No. 32." when admittedly the act giving rise to the dispute was a unilateral one on the part of Carrier and resulted in a change in the established limits of the Cincinnati Division Seniority District despite the clear provision of Rule 32 that "The districts as now established shall not be changed except by agreement."

In the making of Award 9500, the majority obviously had something in mind other than the interpreting of the Agreement in the light of the facts; therefore, I dissent.

/s/ G. Orndorff  
Labor Member