

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the Scope, particularly paragraphs (a), (b), (f), (1), and (m), and other provisions of the Signalmen's Agreement, commencing in December 1956 when the Carrier diverted or otherwise farmed out generally recognized signal work specifically covered by the Signalmen's Agreement to employees of the Kellogg Telephone Company, which company we understand was performing the signal work for the Federal Telephone and Radio Company, who held no seniority or rights to any of the signal work covered by the agreement.

(Specifically, the signal work performed was the wiring between terminals, and/or terminal blocks, wiring and replacing of signal relays, rectifiers, transformers, fuse blocks, and other appurtenances and appliances used in the signal system such as plug-in type relays, relay racks, and bases, power transformer relays, etc., repairing relays, retarder switch units, lamp receptacles, retarder switches in console tower, test panel indicator boards, relay racks, etc., running signal wires in racks, installing test wires, soldering in retarder switches, painting and other construction, repair, installation, inspecting, testing, and general maintenance of the car retarder system at this Carrier's Silvis Classification Yard, Silvis, Illinois.)

(b) The Carrier further violated the Scope, particularly paragraphs (a), (b), (c), (f), (1), and (m), and other provisions of the Signalmen's Agreement listed in part (a) of this claim when it assigned and/or otherwise permitted employees of its Electrical Department, who hold no seniority or rights to any of the signal work covered by the Signalmen's Agreement, to perform generally recognized signal work specifically covered by the agreement.

(Specifically, the signal work performed was the construction, installation, testing and inspecting of a 220-volt stabilizer, outside transformer, with wires, conduits and weatherhead, conduit inside and outside of Tower B, wiring installed in the conduit between the transformer, fused switch boxes and stabilizer, and 4 fused switch boxes inside Tower B, all of which was used for and in this Carrier's signal car retarder system at Silvis Classification Yard, Silvis, Illinois.)

(c) Signal Foreman J. L. Welty, Leading Signalmen J. R. Sales and B. J. Bryan, Signalmen J. L. Fox and K. L. Misak, Assistant Signalmen T. F. Maske and M. W. Wiseley and Signal Helpers K. D. Pernell and W. D. Moore, and all subsequent assignees to Signal Gang No. 5 during the period the work was and is performed by parties not covered by the Signalmen's Agreement, be allowed an equal amount of time that outside employees and employees not covered by the Signalmen's Agreement were and are used to perform any of the signal work embraced herein and covered by the agreement, at pro rata rate of pay, in addition to that already paid for services on those dates. (Carrier's File No. L-130-83)

EMPLOYEES' STATEMENT OF FACTS: In 1949 this Carrier installed a car retarder system at Silvis Yard, Illinois, and used Union Switch and Signal Company equipment in the installation. At the time of that installation the Carrier used three towers at Silvis Hump, designated as Towers "A", "B", and "C". From 1949 until 1956 signal employees performed all inspections, tests, maintenance, construction, installations, etc. involving the car retarder system at Silvis Hump Yard, with no exceptions, and it was considered as signal work fully covered and governed under the Signalmen's Agreement in effect as of July 1, 1933, and the agreement effective July 1, 1952.

The Carrier contracted with the Federal Telephone and Radio Company for the purchase of automatic switching equipment, which was made, assembled, and fully wired in Germany, and later delivered to the United States, and this Carrier completely wired and assembled it in 1956. The contract for and the purchase of this equipment was announced in many trade publications prior to its arrival on the property and was listed as being the first of its kind on any railroad in the United States, being built in Germany by German workers.

The equipment contracted for was automatic switching equipment, to be integrated with a part of the Union Switch and Signal Company equipment then in use on the property. The switch machines, retarders, and other equipment remained in use after the new equipment was installed on the property. The Carrier used three "Towers" in the first car retarder system, but when the new equipment was added to the system, "Tower C" was eliminated and removed, leaving only the present "Towers "A" and "B".

So as to have a place to house the newly contracted equipment when it was delivered on the property, a new addition was built to Tower "A", which consisted of a large room. (See Brotherhood's Exhibits attached: No. 2 showing the exterior of the added room; and No. 5 showing a portion of the interior of the added room.

To house the newly contracted equipment which was to be housed at Tower "B", the Carrier merely remodeled the first floor of the tower

OPINION OF BOARD: In this case the Organization claims violation of the Agreement and particularly paragraphs (A), (B), (F), (I) and (M), as here in above set forth; and that Carrier further violated the Scope, particularly (A), (B), (C), (F), (I) and (M), and the provisions of the Signalmen's Agreement listed in Part A of this claim when it assigned and/or otherwise permitted Employees of its Electrical Department, who hold no seniority or rights to any of the signal work covered by the Signalmen's Agreement, to perform generally recognized signal work specifically covered by the Agreement as here in above set forth.

In this case the Carrier's contract of purchase provided as follows:

"A. Seller warrants that all material and equipment supplied by Seller will be in accordance with this contract, suitable for the purposes stated, and free from defects in material and workmanship, and that when installed by the Railroad in accordance with the terms of this contract and instructions furnished by Seller the materials and equipment furnished by Seller together with the existing equipment of the Railroad and the materials to be furnished by the Railroad pursuant to this contract, will constitute respectively, a complete integrated Automatic Switching System and a complete integrated Automatic Speed Control System for the designated Retarder Classification Yard in satisfactory operating condition, . . ."

Upon delivery by the Federal Telephone and Radio Company, some of the equipment was found to be defective from salt water corrosion and other defects all of which damaged and defective equipment was repaired by the Kellogg Telephone Company exclusively for the seller, Federal Telephone and Radio Company. The Claimant Employees of the Signal Department performed all other work in the installing of the equipment, and their claim is only for the work performed by the seller's Employees necessary to bring the damaged equipment up to 100% satisfaction to the Carrier in accordance with the warranty of the seller.

Based upon the facts contained in this record your Board cannot find that the Carrier diverted, or otherwise farmed out generally recognized signal work, specifically covered by the Signalmen's Agreement, to Employees of the Kellogg Telephone Company, or the Federal Telephone and Radio Company; or that Carrier violated any provisions of the Signalmen's Agreement when it assigned or otherwise permitted Employees of its Electrical Department to perform the work complained of in this record.

The facts in this case are clearly distinguishable from those contained in the Opinions and Awards cited and relied upon by the Organization.

In this case the equipment did not belong to the Carrier, the title to such equipment had not yet vested in the Carrier, under its contract of purchase. The work was not performed or paid for by the Carrier, but was performed by Employees of the Kellogg Telephone Company for the seller, Federal Telephone and Radio Company; consequently, the work could not under any stretch of the imagination be covered by the Signalmen's Agreement.

In support of this conclusion the Board cites with approval its previous awards as follows: No. 5044 (Carter); No. 7965 (Lynch); No. 9604 (Schedler); No. 9918 (McMahon).

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 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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1962.