

Award No. 11002
Docket No. SG-10316

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it assigned and/or permitted the signal forces of the Pennsylvania Railroad Company, who are not covered by the current Baltimore and Ohio Railroad Company Signalmen's Agreement, to perform the signal work of installing flashlight signals at the Baltimore and Ohio Railroad Grade Crossing #2361, Oliver Junction, Pa., on or about November 19, 1956.

(b) The Carrier now pay the following named Signal Department employes of the Baltimore and Ohio Railroad Company for twelve hours each at their respective pro rata rate of pay: James Robinson, Foreman; George A. DeLozier, Signalman; I. W. Pearl, Jr., Signalman; Dale Leonard, Assistant Signalman.

EMPLOYES' STATEMENT OF FACTS: At Oliver Junction, Pa., a single track branch of the Pennsylvania Railroad is approximately parallel to and thirty-five (35) feet south of the single main track of the F.M.&P. Sub-Division of the Pittsburgh Division of this Carrier (Baltimore and Ohio Railroad Co.). A state highway crosses both tracks at grade, the crossing being identified as B&O No. 2631. Highway crossing protection was first installed at this crossing in 1924. At that time a contract was entered into between the Pennsylvania Railroad and the Baltimore and Ohio Railroad under date of February 12, 1924. This contract provided, in part, as follows:

"The Pennsylvania Company shall furnish and erect at said crossing, color-light highway crossing-signals as shown on Plan S-463-B, attached hereto and made a part hereof, and shall perform all other work incident thereto, except furnishing material for and placing in the track of the Baltimore Company, the necessary rail-bonding wires and insulated joints.

CARRIER'S SUMMARY: When the 1951 Signalmen's contract was negotiated the parties were necessarily aware of the existing situation at Oliver Junction, Pa. Since 1924 the work of installing, maintaining and repairing the crossing signals at that point had belonged by contract to the Pennsylvania Railroad Company and as a consequence to the signal forces of that Carrier.

The 1951 contract was negotiated with full knowledge on the part of both parties as to the rights of the two Carriers under the pre-existing contract of 1924. This same situation had been true under the contracts of 1930 and 1939. Certainly, at no time did the Pennsylvania Railroad waive or suggest to waive any part of its right to this work as established under the 1924 contract.

The work about which complaint is now made arose under an order issued by a state regulatory commission. This Division has recognized the binding character of orders issued by such commissions.

In addition, there are many awards issued by the National Railroad Adjustment Board, a greater number before the First Division of the Adjustment Board, ruling as to the absolute validity and binding character of pre-existing contractual agreements in effect at the time negotiations are carried out between Carriers and employees pursuant to labor agreements. The rights of the Pennsylvania Railroad were not, and could not be, jeopardized by the 1951 contract entered into with the Signalmen's organization on this property.

In summary, the Carrier submits that the work here, about which complaint is now made, did not properly fall to signal forces of this Carrier. The work did not fall under their Scope rule.

The Carrier respectfully requests that this Division so hold and that this claim be declined in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The current Agreement (October 1, 1951) in paragraph (c) of the Scope Rule covers work of installing and maintaining signals at crossings when actuated by track or signal circuits. The work described in the submission now before the Division came within this provision of the Scope Rule, if such work was work of the Carrier to perform. The general rule is that a Carrier may not contract with others for the performance of work embraced within the Scope Rule (Award 3251). The principal problem is, therefore: did the Carrier by the Agreement of February 12, 1924, with the Pennsylvania Railroad contract out work or did it relieve itself of the obligation to install and maintain the flashing signal at its crossing No. 2631.

There have been many instances where two or more rail Carriers have found it necessary and desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed. Examples of this are Awards 3450, 8084, 4881 and 6210. The work to be performed under these circumstances falls to the Carrier and its employees who by reason of such agreements between Carriers, have the superior or contractual duty to perform it.

The contract of 1924 between the two Carriers is inherently different from a contract between a Carrier and some third party where the Carrier seeks to remove from under the contract work which it must perform in the course of its operations and which was its obligation to perform when the agreement with the Signalmen was executed.

When the Pennsylvania Railroad and the Baltimore and Ohio made their agreement in 1924 the work of installing and maintaining the flasher crossing signals at crossing No. 2631 was removed out of that belonging to the employees of the Baltimore and Ohio. It does not appear from the record that this agreement has been cancelled. Consequently, as the Signalmen's Agreement was from time to time amended, including the amendments of October 1, 1951, it did not cover the work with which we are here concerned. Rule 73 of the current agreement governs prior agreements between the Signalmen and the Carrier; it could not affect agreements existing between the Baltimore and Ohio and Pennsylvania Railroad. It appears from the record that some maintenance of the Flasher on the North, or Baltimore and Ohio, side of the crossing was done by Baltimore and Ohio crews and it also appears that the Pennsylvania Railroad maintained the circuits and had the operating battery under its own lock. These assertions at best do not show a cancellation of the agreement between the railroads. Of course, when that contract is terminated the work will return under the scope of the Signalmen's Agreement.

We find that the work, the subject of this dispute, was not work subject to the control of the Carrier and was, therefore, not under the scope of the agreement at the time it was performed by a Pennsylvania Railroad crew; and consequently, there was no violation of the agreement when it was so performed.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1962.