Award No. 11438

Docket No. SG-9820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Pacific Company:

(a) That the Southern Pacific Company violated the current Signalmen's Agreement, dated April 1, 1947 (Reprinted August 1, 1950), when it failed and/or declined to apply the Scope, Hours of Service, Call, Bulletin Assignment, Promotion, and Seniority Rules, or other provisions of the agreement, by not assigning generally recognized signal work to employes covered by the agreement since on or about February 1956 and including the completion of installation about July 1956 in Yuma, Ariz.

Specifically, the signal work involved is the fitting up and wiring of relay houses and cases not wired by our own forces between M.P. 619 and M.P. 668 (Thermal to Niland) and M.P. 721 and M.P. 732 (Dunes to Yuma) which constitute component parts and are integral to the signal system.

(b) That the men in the following Signal Gangs:

Portland Gang	8	—	Indio	—	Foreman Engle
Portland Gang	6	—	Mecca	—	Foreman Lambert
Shasta Gang	6	—	Bertram	—	Foreman Kavanaugh
Portland Gang	1	—	Niland	—	Foreman Sargeant
Rio Grande Gang	1	—	Dunes	—	Foreman Long
Rio Grande Gang	4	—	Yuma	—	Foreman Dean
Portland Gang	6	—	Colorado	—	Foreman Lambert

and any other employes who worked or may work on the construction of this C.T.C. be allowed an adjustment in pay for an amount of time

at the straight time rate of pay equal to that required by any employe not covered by the Signalmen's Agreement, to perform the wiring of the factory-wired relay cases and houses. These cases and houses were wired by employes of the Union Switch and Signal Company. [Carrier's File: SIGLMN 152-45]

EMPLOYES' STATEMENT OF FACTS: On or about February 1956, this Carrier commenced installation of a centralized traffic control system namely between Thermal, Calif., and Yuma, Ariz. The installation of the CTC signal project was completed in July 1956. The signal relay houses required in this installation numbered thirty-four. The signal work involved in the instant dispute consists of the fitting-up and wiring of twenty of the signal relay houses by employes who held no seniority or rights and who were not covered by this Carrier's Signalmen's Working Agreement.

The regular Signal Department forces fitted-up and wired the other fourteen Signal relay houses that were used in the CTC installation. The twenty relay houses in this instant dispute, as received, were fitted-up with all the required signal appliances and equipment, such as relays, transformers, terminals, rectifiers, resistance units, etc. These signal appliances had been installed and made stationary on the houses and were completely wired and equipped with identifying tags.

The twenty factory wired relay houses and cases purchased and used by the Carrier in this CTC installation are component parts of this CTC system, the same as the fourteen relay houses that were assembled and wired by the Carrier's Signal Department forces.

The twenty relay houses and their appurtenances in the instant dispute could not be used elsewhere and are not interchangeable without being refitted and rewired because they must be fitted and wired to function at a particular point. Variations in track and switch layouts require alterations in such relay installations and the circuits that operate them. It was absolutely necessary for the employes who were not covered by the agreement, and who performed the work on the twenty relay housings in this dispute, to use blueprints and/or diagrams of the circuit plan and location of each phase of the CTC system where the relay houses were to be installed and used.

The fitting-up and wiring of these relay houses could only be accomplished by the use of specific blueprints and/or diagrams of the circuit plans covering each phase of the CTC system where they were to be installed and where the designed called for.

We direct the attention of the Board to the fact that the Carrier had employes who were qualified and whose work it was to fit up and wire all of the relay houses used in this CTC installation.

We are submitting herewith as factual evidence, two photographs, identified as Brotherhood's Exhibits "A" and "B". Exhibit "A" shows the interior of one of the relay houses that was fitted up and wired by the Carrier's Signal Department forces. Exhibit "B" shows the interior of one of the relay houses that was fitted up and wired by the parties or workers who were not covered by the Signalmen's Working Agreement.

The primary purpose and intent of the two exhibits is to show the definite similarity of the work performed by the claimant employes and the persons not covered by the Signalmen's Agreement. There can be no mistake in

To deprive carrier of this fundamental right of management is not contemplated by the Scope rule nor any other rule contained in the current agreement. The petitioner has not and cannot furnish one bit of evidence that the carrier has negotiated its inherent right to purchase the relay houses and cases involved in this dispute (nor any other equipment) fully assembled. Clearly, therefore, a sustaining award in this case would not only infringe upon carrier's managerial rights but would have the effect of amending the Scope rule of the current agreement by writing into that rule something that is not now contained therein and was not intended by the parties when the current agreement was negotiated and executed. This Board has held on occasions too numerous to mention that it will not revise, amend, alter or modify existing rules nor write new rules.

CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim if not dismissed be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute. The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Between October 1, 1955 and June 29, 1956, Carrier installed a centralized control system (referred to by the parties as CTC) between Thermal, California and Yuma, Arizona, a distance of approximately 114 miles. Thirty four signal relay houses were installed. Fourteen relay houses previously used in the installation between Colton and Indio became available for installation between Thermal, California and Yuma, Arizona. These "fourteen relay houses were originally purchased in 1942 from the Union Switch and Signal Division of the Westinghouse Air Brake Company, fully assembled and wired. . . ." The twenty new relay houses were also purchased from the same manufacturer also fully assembled and wired.

All thirty-four relay houses were installed by employes covered by the Scope Rule of the current Agreement. The fourteen relay houses transferred to the new installation required conversion to meet the necessities of the new installation. This conversion was done by signal employes covered by the Agreement. The other twenty relay houses were built by the manufacturer in accordance with the specifications required at the locations so that no conversion was required.

The issue before this Board is whether Carrier had the right to contract out the wiring and fitting of the twenty relay houses.

In its ex parte submission, Petitioner says:

> "All work in connection with CTC installation is and has been customarily and traditionally recognized as signal work within the meaning and intent of the Signalmen's Agreement and properly

accrues to employes who are classified and perform generally recognized signal work under the provisions of the Signalmen's Agreement. The complete installation of a CTC system is specifically covered under the current Scope Rule and the relay houses and cases involved in the instant dispute are vital, integral parts of the CTC system."

Petitioner argues that: "It is the fitting and wiring at the factory that gives rise to this dispute."

The record does not refute the allegation that the fourteen relay houses originally installed between Colton and Indio were purchased fully assembled and wired and then installed by employes covered by the Agreement. It is admitted that relay houses used in a CTC installation are not interchangeable and that when these same fourteen cases were transferred to the new installations they were re-wired and re-fitted by signalmen to meet the new specifications. We point out, however, that the purchase of the twenty new relay houses fully wired and fitted was not a new and unprecedented undertaking by the Carrier.

There are many Awards of this Division dealing with the subject of subcontracting. Since we are here concerned primarily with the work of signalmen and the Agreement relating to their work, it is appropriate to examine the Awards dealing with this craft.

There is no question that the general principle laid down in Award 3251 (Carter) is valid. We said in that Award:

> "Where work is within the scope of a collective agreement, and not within any exception contained in that agreement or any exception recognized as inherently existent as hereinabove discussed, we feel obliged to adhere to the fundamental rule that work belongs to the employes under the Agreement and that it may not be farmed out with impunity."

The Scope Rule says:

> "This agreement shall apply to work or service performed by employes specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employes covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, interlocking spring switch locking devices, highway crossing protection devices and their appurtenances, wayside train stops and train control equipment, detector devices connected with signal system, car retarder systems, centralized traffic control systems, signal shop work and all other work that is generally recognized signal work."

While this Scope Rule is rather comprehensive, it does not spell out the wiring of houses and cases such as is involved here, therefore, we are obliged to hold that the conduct of the parties is expressive of their intent. The fourteen relay houses, originally used between Colton and Indio, were fully assembled and wired at the factory the same as the twenty cases here involved and as were those involved in a case previously decided against the Employes in our Award 9604.

Award 4713 and 5044 state divergent views. In Award 4713 (Carmody) we sustained a claim by signal employes. We said:

> "The Carrier contends: 'The Scope Rule is simply a declaration of what is generally recognized as signal work.' Such an interpretation would make the Rule practically meaningless and useless. We are not persuaded that that is the interpretation the parties had in mind when they adopted the Rule."

In Award 5044 (Carter) we denied a claim of signal employes. In that case the "signal and electrical engineering in connection with the interlocking plant and signal apparatus used in connection therewith, was performed by the General Railway Signal Company. This company then manufactured the component parts, assembled them in accordance with the plans and specifications prepared by its engineers, and sold the complete unit to the Carrier." Signal employes installed the complete unit. We said in that Award:

> "The wiring of relay houses by a manufacturer is not specifically spelled out as work within the Signalmen's Agreement. . . . *It seems to us that a Carrier, in the exercise of its managerial judgment* could properly decide to purchase engineering skill of the seller of railroad equipment, the benefits of its research and experience, the expertness of seller's employes, and a guarantee that it would operate efficiently and economically. Award 4712. To deprive a Carrier of this fundamental right of management is not contemplated by the rule. On the other hand, if Carrier chose to purchase the component parts of an intricate electrical system and have it assembled on the property, for reasons of economy or otherwise, it would clearly be the work of signalmen to perform in the absence of specific agreement to the contrary."

* * * * *

> "We fail to see . . . that a purchase of new equipment in whatever form it may exist, can constitute a farming out of work under the Agreement for the fundamental reason that it never had been under the Agreement. That which was never within the scope of *an agreement cannot be farmed out.*"

The preponderance of later Awards by this Division follows the findings in Award 5044. Awards 7833 (Shugrue), 7841, 7842, 7843, 7844 (Lynch), 7965 (Lynch), 9604 (Schedler), 9918 (McMahon), 10200 (Gray), and 10765 (Russell).

Particularly significant is Award 9604. It involved the same parties and the same issue. We said:

> "The Carrier purchased all signals, switch machines and related signal switches from the Union Switch and Signal Division of Westinghouse Air Brake Company, including a number of relay houses and cases which were received from the manufacturer fully assembled and wired. All work in making the installation of this equipment was performed by employes covered by the Agreement."

* * * * *

"In factual situations similar and in most pertinent respects identical to the instant claim, a preponderance of the Awards by this Division, over the past many years, have denied the claim."

We find nothing palpably wrong with the preponderant Awards which would justify us to overrule them. For the reasons herein stated we find no merit to the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.