Award No. 11450
Docket No. SG-10869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PITTSBURGH AND WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pittsburgh and West Virginia Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, effective September 1, 1949, as amended, when it failed and/or declined to apply the Scope and other provisions of the agreement, when, beginning on or about September 20, 1957, it allowed employes of the Union Switch and Signal Company, who are not covered by the Signalmen's Agreement currently in effect on this property, to perform signal work in connection with the relocation of signal equipment and signal circuits on its property at or near Mingo, Ohio.

(b) Foreman O. H. Cooke; Leading Signalman Thomas Kubinec; Signalmen E. A. Beans, Ronald Holmquist, Louis J. Haluka, F. C. La Sota, Jr., William Kyluck, Rudolph Malizio, Charles Lyda; Assistant Signalmen John Kelly, John B. Wyke; Signal Helpers James Stoernell, Leo Prehaska, John Prevade; Maintainer Jack Hartline; and any other Signal Department employes who could have worked on this project of relocating signal equipment and signal circuits, be compensated at their respective pro rata rates of pay for an equivalent amount of time as that spent by employes of the Union Switch and Signal Company, who are not covered by the agreement currently in effect on this property, and who performed signal work in connection with the relocation of signal equipment and signal circuits in connection with the changing of track and signal layout at or near Mingo, Ohio.

EMPLOYES' STATEMENT OF FACTS: Prior to March, 1957, the Carrier made plans to extend the siding at Mingo, Ohio, to increase the capacity of the siding by about 80 freight cars. Following this track extension, what had been the siding was to become the main line and what had been the main line was to become the siding.

At this time, and for a number of years previous, the Carrier had an automatic block signal system in use that included the signals at Mingo. The work

that many vacations were scheduled for periods in the last few months of the year.

Without unduly extending this discussion on what is really an unnecessary argument, it is obvious that this work could have been properly contracted out even in the absence of permissive rule. But the permissive rule does exist — and therefore, the conclusion is inescapable that the claims involved are arbitrary and capricious.

The Carrier respectfully urges that the action complained of is not in violation of either rule or Board decisions; that in reality it was permitted by both rule and decision; that if any portion of the subject work could have been done by Carrier's personnel, that portion was so minute and meager as not to be actionable and if done by Carrier's personnel would probably have had a disconcerting effect on the whole project. The claim should be denied.

The claim involved was properly denied in writing. Facts and arguments involved herein have been discussed with the Organization.

OPINION OF BOARD: Prior to the time these claims were filed, the Carrier's main line at Mingo, Ohio, ran parallel and adjacent to a passing track on its north side for about 3,163 feet. Extending westward from the west end of the passing track was a storage track approximately 1,541 feet long.

In 1957, according to Carrier's Statement of Facts, the following work was planned:

> "1. Connect the passing track and the storage track described above, and thereafter extend this line of track some 3,416 feet to the point of interest near Adams Tunnel.
>
> 2. Install high-speed equilateral turn-outs at either end of this new track to utilize the newer and heavier facilities of the newly-established line of trackage for main-line operation."

According to the Employes' version, the Carrier planned "to increase the capacity of the siding by about 80 freight cars. Following this track extension, what had been the siding was to become the main line and what had been the main line was to become the siding."

There was an automatic block signal system in use on the property which included the signals at Mingo. Maintenance work on the signal system was performed by employes under the Signalmens' Agreement.

On March 22, 1957, the Carrier advised the Employes that the construction work planned at Mingo would be contracted to the Union Switch and Signal Company. The pertinent part of this notification is quoted:

> ". . . In brief the contractor will be required to install new signal installations approximately 80 car lengths west of the location of the present signals and switches, after which the present installations will be removed.
>
> It is the Company's position that the work thus contracted to Union Switch and Signal Company is not work which belongs, under the terms of your contract, to the employes in your craft."

It was agreed by the parties on the property that the controlling issue under the facts of record was whether the work planned was a new signal installation within the purview of Exception (b) to the Scope Rule. The exception reads as follows:

> "(b) It is understood and agreed that the Scope of this Agreement does not prohibit the Railway from continuing the past practice of contracting new signal installations or repair work to equipment which must be sent to manufacturer for rebuilding."
> (Emphasis ours.)

In view of the foregoing agreement, the Board accordingly will confine itself solely to an interpretation and application of the exception to the facts in this record.

The controlling fact is that the existing signal system at Mingo was not abandoned or discarded — it was changed or modified to conform to the operational requirements imposed by the proposed relocation and extension of the existing trackage at that place. While it is true, as the Carrier emphasizes, that new signals and circuits would be installed and cut into the existing CTC System, the use of new equipment or material added to an existing signal system would not, in and of itself, constitute a new signal installation within the meaning of the exception to the Scope Rule. Moreover, Carrier admits that existing signals and circuits would be used "in creating the signal circuits for C.T.C. Operation on the new main." In the opinion of the Board, a new signal installation as contemplated by the exception would be one built where none existed before. (See Award 10137). That was not the factual situation at Mingo where it was planned to redesign and extend the existing trackage and, as a result, some new signals and circuits, as well as those in use there, had to be installed to meet the operational requirements of the revised track and signal systems.

Claim is not made for the work involved in designing, engineering and supervising changes and modifications in the track and signal systems. These are management functions clearly not covered by the Scope Rule (Award 4712).

Carrier's defense that covered employes were not available to perform the work because of other assignments and thus suffered no damage does not shield it from liability under the Agreement. We concur in the reasoning and conclusions of Award No. 1803, Second Division, on this point:

> "The record shows that claimants were working on regular assignments during the time the work was done. From this it is argued that they suffered no damage. If this be so, the carrier by reducing forces or refusing to employ an adequate number of employes could circumvent the agreement with impunity. It is the function of the organization to police the agreement and protect the contract rights of the employes it represents. When work is lost to the craft, a recovery for such lost work may be had. It may be that the claimants named would have been required to work overtime if the work had been given them or that, as here contended, they could not have performed it at all if they worked their regular assignments. But this does not excuse the contract violation. It is the carrier and not the organization that has the means to marshall its forces to avoid such contingencies. There can be only one recovery for the breach and it may not be defeated because carrier kept its employes working on other work during the time the contracted work was performed."

Carrier has offered no evidence showing the past practice on this property was to have an outside contractor perform work of the kind here involved. On the contrary, the Petitioner's assertion that covered employes performed "the same kind of revision at Froman, Pa." was not denied.

Procedural objections raised by the Carrier in its rebuttal statement that the claim is premature and should be dismissed for lack of certainty came too late for consideration at the level of appeal. That issue was never raised on the property. There the parties agreed the sole issue was whether the project fell within Exception (b) to the Scope Rule as a "new" signal installation. On that agreed-upon issue rests the decision of the Board that it did not.

We do find, however, that the portion of paragraph (b) of the claim for "any other Signal Department employe who could have worked on this project" etc., should be, and is, dismissed as indefinite, vague, and lacking in specificity. Claim for named claimants is sustained.

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 the Agreement was violated.

AWARD

Claim sustained to extent noted in Opinion and Findings.

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.