

Award No. 12968
Docket No. SG-12253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) The Carrier violated the Signalmen's Agreement when it assigned the installation and maintenance of a car retarder in Proviso Yard, Proviso, Illinois, Central Seniority District, to employees not covered by the Signalmen's Agreement.

(b) The installation and maintenance of the car retarder be assigned to employees covered by the Signalmen's Agreement. [Carrier's File: 79-17-43.]

EMPLOYEES' STATEMENT OF FACTS: The work at issue in this dispute involves the installation and maintenance of a mechanical car retarder in the car retarder system of this Carrier located at its Proviso, Illinois, classification yard. The car retarder system at Proviso Yard, prior to the installation of the mechanical car retarder, consisted of 30 automatic car retarders and other generally recognized signal apparatus such as power switches, signals, relays, storage battery, air compressors, control machines, etc. on a track layout of 64 tracks.

The automatic car retarders at Proviso Yard are located at various intervals along the lead tracks and their function is to retard the speed of the freight cars which are released at the top of the hump to be switched automatically to the various tracks in the classification yard.

All work in connection with the installation and maintenance of the Proviso Yard car retarder system heretofore has been performed by signal employees under the Scope Rule of the Signalmen's Agreement.

About June of 1959, the Carrier purchased a mechanical car retarder for use in its car retarder system at Proviso and installed it at the far end of track 42. The purpose of the mechanical car retarder was to retard the freight cars which were nearing the end of the classification track. The mechanical car retarder provided the last retarding action for freight cars moving by gravity through the classification yard.

ignoring in its entirety the provisions of the agreement which limit the application of the agreement to the "construction, repairing, renewing, replacing, reconditioning, and maintenance of signals or signal systems" and "appurtenances."

The carrier submits that the claim in the instant case is not supported by the provisions of the controlling agreement and for that reason must of necessity be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the installation and maintenance of a device which is called a Racor Mechanical Car Retarder.

There is some dispute as to the name Car Retarder, used by the manufacturer, as being misleading. We hold that it is the function of the equipment which controls, and not an arbitrary name attached to it by the company. The record is clear that the function of this device is to retard the cars and therefore the name itself does not appear to be erroneous or misleading. This particular device is further found in this particular case to be a part of the over-all operation in the Car Retarder Yard.

The case actually hinges on an interpretation of the scope rule. The particular language involved is as follows:

1. This Agreement covers classification, rates of pay, advancement, seniority, and working conditions of employes engaged in the construction, repairing, renewing, replacing, reconditioning, and maintenance of signals or signal systems with all appurtenances on or along the railway tracks for the regulation of the movement of trains, protection of highway crossings, and etc., as follows:

(D) Car retarder systems.

It is urged by the employes that this language says, in fact, that a car retarder system is a signal system. The Carrier contends that the car retarder system must be an appurtenance to a signal system in order to be so construed. We are of the opinion that this language is clear and unambiguous, and that it clearly defines a car retarder system as a signal system per se.

A companion claim has been called to our attention, the same being Award No. 12925. In that case, the Board held "the Petitioner has the burden of proving his case, but we can find no evidence in this record of probative value, which would lead us to any conclusion other than that these devices are stoppers, not retarders." Therefore, we do not feel that it is necessary to further distinguish these cases since the fundamental principle involved is totally different. In the instant case we believe the device to be a retarder and not a stopper.

We call attention to Paragraph B of the claim as submitted by the Brotherhood, "the installation and maintenance of the car retarder be assigned to employes covered by the Signalmen's Agreement". Therefore, it is the decision of this Board that the future installation and maintenance of the type of Car Retarder involved in this claim is hereby declared to properly be assigned to employes covered by the Signalmen's Agreement.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12968 DOCKET SG-12253

The ruling that the involved mechanical device is a car retarder within the purview of the Signalmen's Scope Rule is manifestly erroneous. This device functions independently of the traditional, electrically-controlled car retarders; it merely utilizes the force of gravity to bring a car to a complete stop; it performs precisely the same car stopping function that has been traditionally performed by mechanical skates which have been handled and maintained by employees other than Signalmen. In our opinion, the years of agreement of all concerned that the mechanical skates were merely car stoppers and not part of the car retarder system logically come to the conclusion that the independently-operated mechanical device which took over the function of the skates is also a car stopper and not a part of the car retarder system.

In Award 12925 we held that a similar device was not a car retarder, and that ruling should have been followed in this case.

We dissent.

G. L. Naylor
R. A. DeRossett
W. F. Euker
C. H. Manoogian
W. M. Roberts