Award No. 13326
Docket No. SG-12898

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(a) The Carrier has violated and continues to violate the Signalmen's Agreement when on or about May 18, 1960, it assigned other employes to construct a foundation for the car retarder being installed at Cumberland, Maryland.

(b) The members of Signal Gang No. 2, as listed below, now be allowed an amount of time equal to that consumed by other employes in performing the signal work at issue:

B. L. Cowgill	Signal Foreman
F. W. Gary	Signalman
R. L. Snyder	Signalman
C. A. Machamer	Signalman
R. T. Perrell, Jr.	Signalman
D. D. Cole	Signalman
G. Sweitzer	Assistant Signalman
O. J. Owens	Assistant Signalman
B. J. Moreland	Assistant Signalman
J. R. Rexrode	Signal Helper
R. F. Hawse	Signal Helper
J. W. Rice	Signal Helper

EMPLOYES' STATEMENT OF FACTS: During the summer of 1960, the Carrier's forces, including Signal Gang No. 2, were engaged in the construction of a Car Retarder (Hump) Yard at Cumberland, Maryland. Begin-

the strains and vibrations to which this concrete form of tremendous size would be subjected after the installation of the car retarder precluded the work of construction being assigned to unskilled and untrained employes in this kind and type of work. In a word, there is no valid claim coming from employes under the scope of the Signalmen's Agreement. This claim in all its parts is wholly without merit, and should be denied. The Carrier respectfully requests that this Division so rule, and that the claim in its entirety be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Signalmen aver that Carrier violated the Scope Rule of the Agreement when, on or about May 18, 1960, Carrier assigned employes, not covered by the Agreement, to construct a foundation for a car retarder being installed at Cumberland, Maryland.

Carrier contends: (1) the Scope Rule does not by specific terms or otherwise include the construction or installation of a concrete foundation 121 feet in length and 16 feet in width; (2) in the construction special steel reinforcing bars were used in order to properly and adequately support the tremendous pressures exerted upon the foundation by reason of the operation of the retarder mechanism; and, only Carrier's B&B forces had the necessary skill and experience for the positioning and utilization of such reinforcing bars; (3) the necessary installation work associated with the retarder mechanism was performed in its entirety by the signal forces.

While other Awards have interpreted and applied the Scope Rule before us, none of them are factually in point. This is a case of first impression as to whether the construction of a foundation for a car retarder is work reserved to Signalmen. There is no past practice because no other like installation had been made on Carrier's system. Therefore, our function is to interpret and apply the Agreement in the light of the peculiar facts of record; and, not to expostulate and interpolate other Awards.

THE SCOPE RULE

The following provisions of the Agreement, with emphasis supplied, are pertinent:

> "This Agreement governs the rates of pay, hours of service and working conditions of all employes classified in Article I of this Agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair and painting of:
>
> (a) Signals including electric locks, relays and all other apparatus considered as a part of the signal system, excluding signal bridges and cantilevers.
>
> (b) Interlocking systems, excluding the tower structure.
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> * * * * *
>
> (h) Spring switches where point locked or signal protected, excluding work normally performed by track forces.

(i) Bonding of all track except in electrical propulsion territory.

* * * * *

No employes other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein except that signal supervisory and signal engineering forces will continue in their supervisory capacity to make such tests and inspections of all signal apparatus and circuits as may be necessary to insure that the work is installed correctly and properly maintained. . . ."

RESOLUTION

The record makes clear that the foundation involved is an integral part of the car retarder, part and parcel of the unit design.

Carrier admits that car retarder work comes within the Scope Rule. In a letter to Signalmen's General Chairman, Carrier's Manager–Labor Relations said:

"In the prosecution of this case, you are right that it has been well established by previous correspondence that car retarder work accrues to Signal Department employes and with this as a general proposition I have no dispute, as is evidenced by the fact that after the foundation was completed, the car retarder was installed by employes whom you represent. This is not to say, however, that I agree with you that the construction of a large structure to support the car retarder, as in this case, is also generally recognized as signal work."

With this admission and the undisputed fact that the installation work was performed by Signalmen, the issue narrows as to whether the construction of the foundation comes within the contemplation of the word "construction", as used in the Scope Rule. Obviously, the inclusion of the word "construction" encompasses work other than "installation." We cannot ascribe a superfluous redundancy to the words.

Words in a contract are to be given their usual common meaning in the absence of evidence that the parties intended otherwise. Lexicographers are in agreement that the common meaning of "construct" is "to build." We hold, therefore, that the construction of an integral part of a car retarder, the foundation, in this case, is work reserved to Signalmen. We are further persuaded to this conclusion by noting the specific exclusions in the Scope Rule concerning which Carrier's Manager–Labor Relations had the following to say in a letter to Signalmen's General Chairman:

"Our agreement with the Maintenance of Way forces effective April 1, 1951, clearly requires us to use them in the construction of all structures. The existence of this requirement was recognized when the Signalmen's Agreement, effective October 1, 1951, was negotiated. **The language of this agreement excludes in paragraphs (a) and (b) of the Scope Rule structures that might otherwise be considered as part of the signal system, specific reference being made to signal bridges and cantilevers and interlocking tower structures.** In view of the size of this foundation, it seems clear that

this falls within the category of structures, and as such, its erection would fall within the Maintenance of Way, rather than the Signalment's Agreement." (Emphasis ours.)

The quotation leaves no doubt that the parties intended to qualify "construction" only to the extent of specified exclusions. But, even if this intent was not evident, we would arrive at the same conclusion by application of the principle of contract law that specific exclusions in a contract preclude any other exclusions from its terms.

Since we have found that the construction of the foundation, here involved, is by expressed terms of the Agreement reserved to Signalmen, the size of the foundation and the skills of Signalmen are immaterial. We will sustain paragraph (a) of the Claim.

MONETARY AWARD

The Agreement contains neither a provision for liquidated damages nor punitive provisions for violations. The record contains no evidence that the Claimants suffered actual monetary loss or hardship from the violation of the Agreement. Therefore, since the "Board has no specific power to employ sanctions, and such power cannot be inferred as a corollary to the Railway Labor Act . . . recovery is limited to nominal damages." **Brotherhood of Railroad Trainmen v. Denver and Rio Grande, etc.**, F. 2d (C.A. 10, decided Nov. 19, 1964). Accordingly, we will award each Claimant nominal damages of ten dollars ($10).

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 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 violated the Agreement.

AWARD

Paragraph (a) of the Claim is sustained.

Paragraph (b) of the Claim is denied, except Carrier shall pay each Claimant nominal damages in the amount of ten dollars ($10).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.

SPECIAL CONCURRENCE TO AWARD 13326, DOCKET SG-12898

The Award correctly finds that the Agreement was violated, but then regarding reparations, ill advisedly, I think, takes off into the realm of legalism which might best be left to the courts, if and when resort to court is made.

The better approach would have been to find, as was done by the same Referee in Award 11938, that Claimants are entitled to be paid what they would have earned absent a violation of the Agreement.

G. Orndorff
Labor Member