

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company:

(a) Claim is hereby made that the Carrier violated the Scope of the T&S Department Agreement, when recognized power line work was performed by employees of the Salvco, Inc., 710 Penny Drive, Pittsburgh 35, Pa., this work started on January 7, 1960. This work was performed by one Foreman and six men, between MP 3.2 (known as CK curve) and "Camp Hill" on the former Panhandle Division, taking down the 6600V power line in the above-stated territory.

(b) Claim is hereby made for the following hourly-rated employees who were entitled to do this work, for all time made by the contractor's employees: Signalmen P. S. Carr, A. M. Brun, B. L. Boocks and W. H. Pyle, and Maintainers R. A. Kearns and R. A. Dowler, on whose sections this work was performed.

(c) Claim is hereby made for C. C. Griffin, Foreman T&S, for all time made by the contractor's Foreman while working on this project. The above claim was denied by G. F. Laser on January 15, 1960.

{System Docket 152—Pittsburgh Region Case 61}

EMPLOYEES' STATEMENT OF FACTS: As shown by our notice of November 17, 1961, to the Executive Secretary of this Division, this is a dispute between the Pennsylvania Railroad Company and the Brotherhood of Railroad Signalmen (formerly Brotherhood of Railroad Signalmen of America), and it concerns the application of their agreement covering the wages, hours, and working conditions of the employees of the Telegraph and Signal Department. For the sake of brevity, the Pennsylvania Railroad Company will be referred to herein as the Carrier, the Brotherhood of Railroad Signalmen as the Brotherhood, the Telegraph and Signal Department Agreement as the Signalmen's Agreement, and the employees of the Telegraph and Signal Department as signal employees.

The signal employees on this Carrier chose this Brotherhood as their representative for collective bargaining and for the purposes of the Railway

not the punitive rate should be paid to these employes who were entitled to the work in question but who were not required to perform it. That is, each of the claimants shall be paid for ten hours' time at the regular straight-time rate." (Emphasis ours.)

The Carrier asserts that the above cited record of prior claim settlements involving T. & S. Department employes being wrongfully deprived of work in violation of their Agreement clearly shows that the principle is well established on this property that the proper method of compensating an employe in such cases is on the basis of time lost by reason of the violation, represented by the difference between what the employe actually earned and what he would have earned had he not been deprived of the work. As confirmed in Award 7242, the only issue there before the Board was the question of whether the payments allowed in applying this principle should be at the pro rata or punitive rate and the determination therein was that the pro rata rate was the proper one.

Therefore, in view of this well-established and controlling principle, the Carrier respectfully submits that in the event your Honorable Board somehow were to decide that a violation of the Agreement did occur in this case, it could not properly enter an award requiring payment of the claim on any other than the above indicated basis.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the work involved in this dispute was not work reserved exclusively for T. & S. Department employes by virtue of the Scope Rule of the Signalmen's Agreement or otherwise; and that the performance of such work by the contractor's employes was not in violation of said Agreement. Therefore, no proper basis for the claim exists, and your Honorable Board is respectfully requested to deny the claim in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: An agreed upon statement of facts is a part of the records of this case and states as follows:

"JOINT STATEMENT OF AGREED UPON FACTS: Claimants ..

all held regular assignments at Carnegie, Pa., tour of duty 7:30 A. M. to 4:00 P. M., with 30 minutes lunch period, Saturday and Sunday rest days.

"The 6600 volt power line from MP 3.6 to MP 7.8 on the Panhandle District was abandoned. It was decided to remove the lead cable which constituted the power line from the pole line.

"The removal of this cable was started by the Salvco Company on January 4, 1960."

In addition to the above stated facts the Board has made these additional findings. The Carrier utilized as part of its signal system a 6600 volt power line. To replace this power source a 440 and/or 220 volt power line was installed. Upon completion of the installation of the 220 and/or 440 power lines use of the 6600 volt power line was discontinued. The 6600 power line was permitted to remain on the poles of the Carrier neither interfering or assisting in the signal system of the Carrier. The Carrier then entered into a contract with a proposed partnership known as Salvco. Salvco was composed of 4 members of the Brotherhood of the Railway Signalmen, the contract called for the removal of the 6600 volt power line for a consideration to the company of \$1.00 plus 25% of the salvage value.

In order for the signalmen to be entitled to the work of removing 6600 volt power line that they must establish such right under the Scope Rule of their contract. This Scope Rule provides:

"SCOPE

"These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, and Baltimore and Eastern Railroad Company and their respective Telegraph and Signal Department employes, of the classifications herein set forth (and hereafter these Agreements for the sake of convenience shall be referred to as 'the Agreement')—engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telegraph and telephone equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and the maintenance of car retarder systems, and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work—represented by the Brotherhood of Railroad Signalmen of America and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes of the Pennsylvania Railroad Company, and Baltimore and Eastern Railroad Company, specified in Article 1 hereof, namely, inspectors, assistant inspectors, foreman, assistant foremen, leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, signalmen, assistant signalmen, and helpers.

"(Effective June 1, 1950) The employes in the Telegraph and

Signal Department shall continue to install, maintain and repair, and do testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply, (when such compressors, sets or power supply are used wholly or primarily for signal or telegraph and telephone devices, apparatus or lines, and are individually housed in signal or telegraph and telephone facilities) which are part of the signal or telegraph and telephone systems, to the extent that such work is now being performed by employes of the Telegraph and Signal Department. This paragraph shall not, however, prejudice any rights which such employes may have under the Scope Rule, exclusive of this modification, to claim work performed by other crafts in violation of the Scope Rule.

"EXCEPTIONS

"(a) This Agreement shall not be construed as granting to employes coming within its Scope the exclusive right to perform the work of installing or maintaining other than Railroad owned facilities or equipment located on the property of the aforesaid railroads.

"(b) This Agreement shall not apply to inspectors or assistant inspectors in the offices of the Chief Engineers, Maintenance of Way or Superintendents of Telegraph and Signals, or in the offices of officers of equal or higher rank, and such inspectors or assistant inspectors shall not be required or permitted to perform any of the duties of employes of the classifications set forth in Article 1 of this Agreement.

"(c) No position of foreman, assistant foreman, inspector or assistant inspector, nor employes assigned to any of those positions, shall be subject, in any respect, to the following provisions of this Agreement:

"Article 2—Sections 1 to 11, inclusive, and Sections 13, 14, 16, 17, 18(a), (b), (c), (e), and 19.

"Article 3—Sections 1 to 3 inclusive."

This Scope Rule clearly gives to the Brotherhood the right to the work of installation and maintenance of signal equipment. Additionally, removal of signal equipment necessary and incidental to the installation and maintenance of the signal equipment would be within the framework of the rule. However, removal of signal equipment unnecessary and immaterial to the installation and maintenance is not within the provisions of the Scope Rule. Clearly the 6600 volt line was not necessary or material to the operation, installation, or maintenance of the signal system of the Carrier and is clearly without the framework of the Scope Rule and may be handled in such manner as the Carrier shall elect. By the agreed upon statement of facts the 6600 volt power line had been abandon. Award 12023 (O'Gallagher); Award 12800 (Engelstein)

The Brotherhood argues that work cannot be taken out of an Agreement. This principle is firmly established and not contested, this principle bears no relationship to the problem at hand, for here it is not whether or not work can be taken out of an Agreement but rather whether or not it was ever in the Agreement. If the work of the removing of the abandoned power lines which are neither necessary or material to the installation and maintenance

of the signal system is to be included in the framework of the Scope Rule of the contract between the Brotherhood and the Carrier it must be included at the bargaining table and not by this Board.

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 has not been violated.

Claim denied.

Dated at Chicago, Illinois, this 30th day of April, 1965.

DISSENT TO AWARD NO. 13560

DOCKET SG-13125

Award No. 13560 correctly holds that the Scope Rule of the Agreement clearly gives to the Brotherhood the right to the work of installation and maintenance of signal equipment, and that removal of signal equipment necessary and incidental to the installation and maintenance of the signal equipment would be within the framework of the rule. However, we can not subscribe to its holding that the work in dispute was not necessary and material to the installation and maintenance of the Carrier's signal system.

For this and other reasons, we hold Award No. 13560 to be in error, and we dissent.

W. W. ALTUS
For Labor Members

May 7, 1965