

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Akron, Canton and Youngstown Railroad Company:

On behalf of Signal Foreman J. V. Preto for one (1) eight (8) hour day in May, 1959, and on behalf of Signalman G. T. Sines for three (3) eight (8) hour days in June, 1959, at their respective rates of pay, because of Carrier purchasing pre-wired relay cases, for use at highway crossing at Akron, Ohio, from the Union Switch and Signal Company, whose employees hold no seniority or other rights on this Carrier. [Carrier's File: I-70]

EMPLOYES' STATEMENT OF FACTS: As shown in the Statement of Claim, the claimants in this dispute are Signal Foreman J. V. Preto and Signalman G. T. Sines. Signal Foreman Preto has been in charge of signal construction work on this Carrier since June 14, 1927. Since 1947, Signalman Sines has performed practically all of the circuit and case wiring work which has been performed under the supervision of Foreman Preto.

In the past, the signal employees designed the signal circuits, wired and installed all relay cases. The work of wiring the relay cases would either be performed in the signal shop or in the field, depending upon the circumstances.

Prior to June 1, 1959, the claimants were engaged in a signal construction project at Akron, Ohio, identified by the Carrier for bookkeeping purposes as AFE A 812. On or about June 1, 1959, the Carrier placed two relay cases in service in connection with this project, for use in connection with highway crossing signals in Akron. After the relay cases were placed at their respective locations, Signalman Sines made circuit and wiring changes in them.

These relay cases, two feet and seven inches in size, were purchased from the Union Switch and Signal Company and had been prewired by persons who hold no seniority or other rights under the Signalmen's Agreement on this Carrier.

1. Claim is improperly before your Board.
2. Claim has not been handled on the property in accordance with the provisions of the National Agreement dated August 21, 1954.
3. Carrier has shown that there has been no violation of Scope Rule of the applicable agreement in this claim and, therefore, the claimants are not entitled to compensation which they claim.
4. 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 interpretation 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 to it. To grant the claim of the employees in this case would require the Board to disregard the Agreement between the parties hereto, and impose upon the Carrier conditions of employment and obligations with reference thereto beyond the Carrier's control and not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-operating Employees Agreements. On April 22, 1965, that Committee rendered the following Findings and Decision (NDC Decision 20):

"FINDINGS: (ART. V) Both parties contend that Article V of the August 21, 1954 Agreement has been violated in the handling of the above claim on the property. The Carrier contends that the claim was not handled in accordance with the provisions of Article V, as stated below. The employees contend, in their submission before the Third Division, that in denying the claims Chief Engineer did not give the reasons upon which his decision was based. This contention was first raised by the employees before the Third Division.

The claims as initially submitted June 8 and 10, 1959 referred to 'pre-wired cases for holdout signals A.F.E. A-812' and 'pre-wired cases for A.F.E. 812.' The Chief Engineer denied them in letter of June 18th, stating that he did not agree that the scope of the Signalmen's Agreement had been violated.

On July 20th the organization's Grand Lodge Representative, in appealing the denial, stated 'Relay cases referred to were used at highway crossing at Akron.' The Railroad regarded this language as indicating that the claim on appeal had to do with certain signal cases which had been installed in a highway crossing automatic signals project which had earlier been completed as Project AFE A-805. It accordingly contends that the claims as so altered had not theretofore been handled, that such claims were not properly before the Third Division inasmuch as they were not the claims which were handled on the property, and that the Railroad had not had due and

proper notice of the claims against it or the grounds and nature of such claims such as to enable it to answer them and defend itself.

The employees contend that all of their handling—including the July 20th letter—was on the holdout signal relay cases in Project AFE-812 and that their reference to the cases being 'for use at highway crossing at Akron' was by way of identification only and did not indicate that the relays directly controlled the crossings, although the circuits necessarily intermingled to some extent; and they assert the Railroad received due and proper notice of the claims.

The National Disputes Committee rules that the claims in this docket are the claims which were handled on the property under Article V of the August 21, 1954 Agreement. This ruling is limited to the contention that Article V, as such, was not complied with.

As to the employees' contention that the carrier's disallowance of the claim did not give the reasons for such disallowance as required by Paragraph 1 (a) of Article V of the August 21, 1954 Agreement, the National Disputes Committee rules that inasmuch as the employees did not raise such contention in their handling on the property, they may not raise such contention before the Third Division.

DECISION: The claims before the Third Division are the same claims as were handled on the property under Article V of the August 21, 1954 Agreement. The employees waived the contention that Article V was not complied with by their failure to raise that question on the property.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

Carrier purchased two pre-wired relay cases from the Union Switch and Signal Company for use in a Signal System Project at Akron, Ohio. Claimants, Signal Foreman J. V. Preto and Signalman G. T. Sines, contend that the installation of the wiring in the relay cases is work which properly belongs to them under the Scope Rule and is also work to which they are entitled through past practice.

Carrier denies that this work is exclusively reserved to Claimants under the Scope and asserts that the relay cases were assembled by the manufacturer before it had acquired title or control. It maintains that after delivery the apparatus was then properly installed by signalmen.

The Scope Rule is of the general type. Although it states that, "... signal work shall include the construction, installation, maintenance, and repair of signals . . .", it does not specifically reserve work of assembly apparatus such as relay cases to signalmen. In the absence of exclusive right to this work, Carrier may purchase the component parts of the signal system, the relay cases pre-wired, as it did in the instant case. Furthermore, the record does not give evidence that there was a practice of assembling relay cases by employees covered by the Agreement. Our opinion is in accord with Award No. 5044 which involved a similar issue and the Scope Rule of the same Agreement.

For the reasons stated, we hold that the Agreement was not violated.

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 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

The Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965

**DISSENT TO AWARD NO. 13698,
DOCKET SG-11957**

Award No. 13698 is in error in several respects, not the least of which is its holding that:

"Furthermore, the record does not give evidence that there was a practice of assembling relay cases by employees covered by the Agreement. * * *"

The Petitioner emphatically contended in its statement of facts that:

"In the past, the signal employees designed the signal circuits, wired and installed all relay cases. The work of wiring the relay cases would either be performed in the signal shop or in the field, depending upon the circumstances."

We do not find that the respondent has made any categorical denial of the Petitioner's statement of fact as to practice. In Award No. 12096 we held:

"While the assertion by the Petitioner should not be considered conclusive proof, the burden of going forward was clearly shifted to the Carrier. Its failure categorically to deny that Mr. Nelson had ordered the work, or to submit any affidavit or evidence as to Mr. Nelson's rule in this incident when Mr. Nelson was available to it, did not meet its burden. We must hold, therefore, that the facts were as presented by the Claimant and that the Carrier had violated the Scope Rule of the Agreement in authorizing a person, not covered by the Agreement, to perform work exclusively reserved to Signalmen."

The Majority also seems to be unable to distinguish between general and specific scope rules. Anyone remotely familiar with signaling in the industry, well recognizes that the words "construction" and "installation", as used in the confronting scope, include the work which is the subject of Award No. 13698, that the subject work is a part of the whole and not a separate function as the Majority would have us believe.

Award No. 13698 is in obvious error; therefore, I dissent.

W. W. Altus
For Labor Members
7/27/65