**Award No. 13718**

**Docket No. SG-13481**

## NATIONAL RAILROAD ADJUSTMENT BOARD

### THIRD DIVISION
(Supplemental)

Benjamin H. Wolf, Referee

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## PARTIES TO DISPUTE:

### BROTHERHOOD OF RAILROAD SIGNALMEN

### INDIANA HARBOR BELT RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Indiana Harbor Belt Railroad Company that:

(a) The Indiana Harbor Belt Railroad Company violated the current Signalmen's Agreement, when work was performed by B.&O.C.T. Signal Department Employes not covered under the current Indiana Harbor Belt Railroad Company's Signalmen's working agreement.

(b) The following Signal Department Employes be compensated for comparable hours worked to cover the loss they suffered and the signal work they were deprived of as a result of the Carrier violating the current working agreement:

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| R. J. Bolda | R. L. Viernum |
| T. W. Stanepher | J. T. Taylor |
| R. E. Burns | C. L. Null |
| L. D. Usher | J. E. Morrison |
| J. H. Walker | C. R. McMillen |

EMPLOYES' STATEMENT OF FACTS: This dispute involves signal construction work at the North Harvey Interlocking Plant, a joint facility owned by the Baltimore & Ohio Chicago Terminal Company and the Indiana Harbor Belt Railroad Company, a subsidiary of the New York Central System.

Prior to this dispute, signal construction work at North Harvey was performed by Indiana Harbor Belt Signal Forces, and maintenance work at North Harvey was performed by B&OCT Signal Forces. Under date of August 13, 1948, the I.H.B. and B.&O.C.T. entered into an agreement concerning how certain work would be performed at North Harvey. However, the Brotherhood points out that it was not a party to this agreement and was not then, nor since, requested to negotiate the respective Signalmen's Agreement on the properties involved to bring them into compliance with the unilateral Agreement between the Carriers.

No construction work had been performed at North Harvey from the time the Carriers entered into the August 13, 1948 Agreement until the work giving

by the Organization is a conclusion without evidence to support it, is self-serving and not worthy of consideration. Carrier reiterates there is no basis whatever for the Organization's claim.

In the claim before this Board for adjudication, the Organization is also requesting that the employes so named in their notice letter to your Division dated April 4, 1962, "be compensated for comparable hours worked to cover the loss they suffered." Without prejudice to Carrier's aforestated position, Carrier calls attention to the absurdity of this demand. Carrier has shown that the Milwaukee Road proposed certain track and interlocking changes be made at the North Harvey interlocking plant which work the B&OCT elected to perform. That transaction was solely between those two carriers and was allegedly performed at the sole expense of the Milwaukee Road.

The Organization is requesting compensation for the named employes ". . . to cover the loss they suffered . . ." but no showing has been made during the handling on the property that any employe suffered a "loss." This Carrier submits that the employes named worked or were given the opportunity to work each and every day to which they were entitled. No time was lost by any employe of this Carrier as a result of the matter here in dispute.

CONCLUSION: This Carrier has the obligation imposed upon it by law to operate efficiently and economically. This obligation should not become a nullity simply because of an abortive attempt by an organization to dictate the terms of an agreement between two carriers.

On the record in this case it is the position of the Carrier that the claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On February 6, 1896, Carrier's predecessor entered into an agreement with the predecessor of the Baltimore and Ohio Chicago Terminal Railroad concerning the operation and maintenance of signal equipment at a crossover and wye connection at North Harvey, Illinois, in which they were jointly interested. It was pursuant to this agreement that the Baltimore and Ohio Chicago Terminal Railroad elected in 1960 to perform certain work at the North Harvey Interlocking Plant. In claiming this work, the Organization cited its Scope Rule and the fact that it has always performed the work involved. It claimed that Carrier violated the Signalmens' Agreement in contracting out work which belonged to it under the Scope Rule.

It is a general rule that Carrier may not contract with others for the performance of work embraced within the Scope Rule. (Award 3251 and 11002) This rule, however, is not applicable in this case even if we assume that the work claimed was that of the Claimants because the contract right of the Baltimore and Ohio Chicago Terminal Railroad antedates and is, therefore, superior to any agreement between the Organization and the Carrier. The Agreement between the Baltimore and Ohio Chicago Terminal Railroad and Indiana Harbor Belt Railroad Company is similar to many others where two or more rail Carriers have found it necessary and desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed. See Awards 3450, 8084, 4881 and 6210.

In Award 11002, we held that the "work to be performed under these circumstances falls to the Carrier and its employes who by reason of such

agreements between Carriers, have the superior or contractual duty to perform it."

In that award we also pointed out that such an agreement between two Carriers "is inherently different from a contract between a Carrier and some third party where the Carrier seeks to remove from under the contract work which it must perform in the course of its operations and which was its obligation to perform when the agreement with the Signalmen was executed".

In our case, the obligation under the Agreement of 1896 was earlier than the Signalmans' Agreement which was entered into for the first time in 1935. The latter agreement must be deemed, in the absence of any express contractual provision to the contrary, to have been made subject to existing conditions, among which might be prior contractual obligations such as in this case.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1965.