



Award No. 18544
Docket No. SG-18864

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Detroit, Toledo and Ironton Railroad Company:

(a) That the Detroit, Toledo and Ironton Railroad Company (Carrier) has violated and continues to violate the Scope Rule of the Current Agreement between it and its employees represented by the Brotherhood of Railroad Signalmen (Brotherhood) by causing and/or permitting employees of Sylvania Electric Products Company (Contractor) to perform maintenance and repair work on Automatic Car Identification (A.C.I.) equipment.

(b) That Messrs. T. J. Rathke and K. W. Keeton (Claimants) be paid as prescribed in Agreement Rules 16 and 55 for all time worked by employees of the contractor in violation of the Agreement. The time involved to be divided equally between the Claimants.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute bearing an effective date of January 1, 1955, as amended, which is by reference made a part of the record in this dispute. The Scope of that Agreement provides:

"SCOPE.

This Agreement shall apply to all employees in the Signal and Communications Department below the rank of Assistant Supervisor of Signals and Communications engaged in the construction, installation, inspecting, testing, maintenance and repair of signals, signal power lines, telegraph and telephone systems, electronic equipment and apparatus, interlocking plants, electrically operated highway crossing protection devices, wayside train stop and train control equipment, centralized traffic control systems, signal shop work and all other work generally recognized as signal and communication work."

Article I - Classification - of that Agreement, as amended November 2, 1966, reads in pertinent part:

Per a letter dated February 28, 1969, Mr. Keeton advised Mr. Swartzwelder that the denial of the claim is being further appealed and did so in another letter dated February 28, 1969 to Mr. H. W. Seeley, Assistant Vice President-Chief Engineer. (See Exhibits E.)

Mr. Seeley replied to Mr. Keeton's appeal in a letter dated April 22, 1969 (see Exhibit F), and declined the appeal.

In a letter dated June 16, 1969, Mr. Keeton advised Mr. Seeley that the denial of the claim would be appealed and did so in another letter dated June 16, 1969 to Mr. R. J. O'Brien, Personnel Manager. (See Exhibits G.)

Mr. O'Brien replied to Mr. Keeton's appeal in a letter dated July 15, 1969 (see Exhibit H), and declined the appeal for the reasons stated in his letter.

Conference was held on September 29, 1969 for the purpose of discussing the claim. Mr. Keeton confirmed the conference in a letter dated October 9, 1969 and Mr. O'Brien confirmed the conference in a letter dated October 21, 1969. (See Exhibits I.)

Automatic car identification equipment consists of a series of devices that are intended to automatically identify marked rolling stock at various locations on the railroad and produce digital output for use in railroad data processing and control of car utilization. Some of the parts that presently comprise A.C.I. equipment are referred to as scanners, decoders, computers, labels, etc.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that automatic car identification equipment was leased from and installed for use on the Carrier's property by Sylvania Electric Products, Inc., and that such equipment became operational on or about July 17, 1968. The claim alleges a violation of the Signalmen's Agreement because of signal employees not being used to perform maintenance and repair work on such equipment.

The Carrier contends that the Agreement does not reserve the work involved exclusively to Signal Department employees.

The Scope Rule and Article I - Classification - of the applicable Agreement reads:

"SCOPE.

This Agreement shall apply to all employees in the Signal and Communications Department below the rank of Assistant Supervisor of Signals and Communications engaged in the construction, installation, inspecting, testing, maintenance and repair of signals, signal power lines, telegraph and telephone systems, electronic equipment and apparatus, interlocking plants, electrically operated highway crossing protection devices, wayside train stop and train control equipment, centralized traffic control systems, signal shop work and all other work generally recognized as signal and communication work."

"ARTICLE I. CLASSIFICATION

RULE 1. FOREMAN-ELECTRONIC TECHNICIAN: An employe who is assigned to and whose principal duties are to supervise other electronic technician employes classified herein, who may, however, perform electronic technician's work and work with such employes, shall be classified as Foreman-Electronic Technician.

RULE 1-A. INSPECTOR-FOREMAN: An employe whose principal duties are inspecting the facilities, equipment or apparatus installed, maintained or repaired by leading maintainers or maintainers with or without assistant maintainers or helpers, and supervising the work of such employes, shall be classified as Inspector Foreman.

RULE 2. LEAD ELECTRONIC TECHNICIAN: An employe who is assigned to work with and supervise the work of one or more electronic technicians with or without Assistants shall be classified as a Lead Electronic Technician.

Rule 2-A. ELECTRONIC TECHNICIAN: An employe qualified and assigned to install and maintain electronic equipment and apparatus shall be classified as an Electronic Technician.

RULE 3. FOREMAN: An employe who is assigned to and whose principal duties are to supervise other employes classified herein, who may, however, work with such employes, shall be classified as a Foreman.

RULE 3-A. LEAD MAINTAINER: An employe who is qualified and assigned to work with and supervise the work of one or more maintainers, with or without assistants and/or helpers, shall be classified as Lead Maintainer.

RULE 4. MAINTAINER*: An employe assigned to perform work generally recognized as signal and communication work and perform the inspection, testing and repair of relays and insulated wire or locking, shall be classified as a Maintainer.*

RULE 4-A: An employe assigned to perform work generally recognized as signal and communication work shall be classified as a Maintainer.

RULE 5. ASSISTANT ELECTRONIC TECHNICIAN: An employe in training for a position of Electronic Technician, working with and under the direction of an Electronic Technician, shall be classified as an Assistant Electronic Technician.

RULE 5-A. ASSISTANT MAINTAINER: An employe in training for a position of Maintainer, working with and under the direction of a Maintainer, shall be classified as an Assistant Maintainer.

RULE 6. HELPER: An employe assigned to perform work generally recognized as Helper's work, which includes all unskilled work

covered by the Scope of this Agreement, shall be classified as a Helper. Helpers as such will not be permitted to do work recognized as that of other classes named in this Article.

NOTE: It is understood and agreed that the above classified employees will continue to perform such telegraph, telephone and electronic work as has been customary.

NOTE: *Designates MAINTAINER will perform the inspection, testing and repair of relays and insulated wire or locking."

The Carrier contends that automatic car identification equipment is new to the railroad industry, is experimental in nature and is subject to constant modification by the Sylvania Electric Products firm from which the equipment is leased.

It is clear from the "NOTE" under Article I of the Agreement that all electronic work is not reserved to employees covered by the Agreement. The "NOTE" refers to "telephone and electronic work as has been customary." The automatic car identification equipment was not in existence at the time the Agreement was entered into. Therefore, work on such equipment could not be "electronic work as has been customary" as referred to in the "NOTE."

As the work complained of was not in existence at the time the applicable Agreement became effective, it cannot properly be held to be work within the scope of that Agreement. We will, therefore, deny the claim.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.

DISSENT TO AWARD 18544, DOCKET SG-18864

Nowhere in its opinion does the Majority (Carrier Members and "Neutral" Referee) discuss the position of the Employees or even acknowledge that they took one. Hence, it is quite obvious that the Employees' statement was completely disregarded.

It has long been the illusion of this member that those appointed to serve as Referees to resolve disputes in which this Board has deadlocked were supposed to be neutral and to consider the positions of all parties. The Majority's approach to subject dispute goes far in dispelling that illusion.

Award 18544 is palpable error and I dissent.

W. W. Altus, Jr.
Labor Member