



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania-Reading Seashore Lines that:

(a) The Carrier violated the Scope Rule of the current agreement when it assigned men not coming within the Classifications set forth in Article 1 of this Agreement to perform work accruing to Signal Department Forces. Said work was the removal of and reinstallation of a compressor unit at Atlantic Tower, Atlantic City, New Jersey, on November 5, 1962.

(b) The Carrier pay Mr. G. W. Dunkle and Mr. A. W. Hansel, Signalmen with headquarters at Westville, New Jersey, four (4) hours' pay each at the pro rata rate for the time required by the above-mentioned men to perform this work.

EMPLOYEES' STATEMENT OF FACTS: This dispute involves work on an air compressor unit which had previously been installed by Signal Department forces at Atlantic Tower, Atlantic City, New Jersey. The sole function of the unit installed there is to supply air pressure for switch movements and smash-board movements used in connection with the Signal System at Atlantic Tower. The air compressor unit is an integral part of the Signal System; it contains all of the controls for the operation of its electric motors which furnish power to the two parallel compressors contained in the unit. The safety devices which protect the instruments are also included in the unit.

Originally, Signal Department forces installed the foundation on which the unit is mounted; they set it in place on the foundation; they wired it; they even installed the electric power which runs it; they ran the pipe from it to the appliances which it operates; they adjusted it; they inspected it, and they continue to do so. The installation was completed during the month of October, 1962.

On November 5, 1962, Carrier assigned M. of W. Forces, not coming within the Signalmen's Agreement, to remove the air compressor unit and replace it with another. As a result of that assignment, Local Chairman George F. Danley filed a claim with Supervisor C. & S. E. T. Hammer on November 12, 1962, on behalf of the Signalmen named in our Statement of Claim. The claim asks that Claimants be paid four (4) hours at the pro rata

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether the Carrier's utilization of the M. of W. Repairmen to remove a defective compressor unit and replace it with a serviceable unit, incident to making repairs to the defective unit, resulted in a violation of the Scope Rule of the applicable Rules Agreement and whether the Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: On November 5, 1962 Maintenance of Way employees not covered by the Signalmen's Agreement removed and replaced an air compressor unit at Atlantic Tower, Atlantic City, New Jersey; the function of the air compressor unit involved was to supply air pressure for part of the signal system at Atlantic Tower. According to the Signalmen four hours work was involved for each of 2 men according to the Carrier the time involved was not four but two hours.

The Scope Rule of the Signalmen's Agreement reads in its applicable portion:

"These Rules, subject to the exceptions hereinafter set forth shall constitute an Agreement between the Pennsylvania-Reading Seashore Lines and Telegraph and Signal Department employees, of the classifications herein set forth engage in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telephone and telegraph office 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 employees of the Pennsylvania-Reading Seashore Lines, specified in Article 1 hereof, namely, inspectors, assistant inspectors, foremen, assistant foremen, leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, signalmen, assistant signalmen, and helpers.

(Effective December 1, 1951) The employees 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 employees of the Telegraph and Signal Department. This paragraph shall not, however, prejudice any rights which such employees may have under the

Scope Rule, exclusive of this modification, to claim work performed by other crafts in violation of the Scope Rule."

Carrier argues that the work was properly done by Maintenance of Way employes, and that it has always been done by them as an incident to making repairs to compressors. The Carrier refers to the language in the Scope Rule cited above:

"(Effective December 1, 1951) 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." (Emphasis ours.)

and argues that since at the time of the signing of the Agreement the work in dispute was not being performed by the Signalmen but by Maintenance of Way employes, the Rule does not reserve the work to the Signalmen.

The Signalmen argue that the language cited by the Carrier is not applicable because of the sentence in the Scope Rule immediately following it.

"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."

This, according to the Signalmen, brings into play instead the first paragraph of the Scope Rule in which is effectively reserved for the Signalmen the removal and installation of the air compressor as a part of maintaining the signal system of which it is an integral part. The Signalmen do not argue that the repair of the compressor, once it has been removed, is work which may not be done by Maintenance of Way employes; but the Signalmen denied (page 5 of Submission of Signalmen) that the removal of a defective air compressor is work which either always or regularly has been performed by Maintenance of Way employes. In its submission, the Brotherhood of Maintenance of Way Employes argue that, since there being no dispute that the repairing of the involved equipment belongs to Maintenance of Way employes (and the Brotherhood supplied some detailed evidence that such repair work has been done by Maintenance of Way employes for many years prior to the incident here involved), and since, as claimed by the Carrier, "* * * it has always been the practice of M. and W. forces to install air compressors incident to making repairs thereof, the work in dispute in this case belonged to the Maintenance of Way employes.

In spite of the fact that the Signalmen denied that the disputed work had always been performed by the Maintenance of Way employes, no proof is supplied in the record by either the Carrier or the Maintenance of Way employes adequate to prove, in the face of that denial, that the practice has

been as claimed by them. Since the burden of proving the facts necessary to support this defense against the claim must be borne by the Carrier, we find this defense to be without merit.

There was no dispute against the assertion by the Signalmen that the compressor was an integral part of the signal system. We find, therefore, that the argument of the Signalmen that the work belongs to them under the first paragraph of their Scope Rule is valid.

Since there is no evidence in the record to support the Signalmen's claim for four hours rather than two hours for each Claimant in sustaining the claim below, we will modify paragraph (b) from 4 hours pay for each of the Claimants to 2 hours pay for each at the pro rata rate.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained as modified above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.