

 Award No. 18958

Docket No. SG-15474

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet and Eastern Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, and the Memorandum of Agreement dated November 19, 1956, when, on July 27, 1963, T. & T. forces not covered by the Agreement were used to make permanent repairs to signal line wires which were damaged in a lumber yard fire on July 22, 1963, at Lake Zurich, Illinois. Temporary repairs had been made on July 22, 1963, to the damaged signal line wires by Signal Maintainer D. Schumaker, Leading Signalman A. E. Littlejohn, and Signalman W. J. Zugel.

(b) Foreman H. C. Dieter; Leading Signalman A. E. Littlejohn; Signalmen F. A. West, W. J. Zugel, J. F. Manning; Assistant Signalmen G. L. Roettger and J. R. Lunsford all be paid eight (8) hours' pay each at their respective straight time hourly rates because of this violation. (Carrier's File: Case No. RS-6-63)

EMPLOYEES' STATEMENT OF FACTS: This dispute involves a diversion of signal work. There was a fire along Carrier's right of way in Lake Zurich, Illinois, on July 22, 1963. A lumber yard burned and damaged three spans of signal wires.

Three Signal Employees were called to repair the damage and, since the pole line on which the signal wires are located is used for telephone and telegraph circuits as well, two T. & T. Linesmen were also called.

Signals governing movements over the track in that area were not working, so the Signalmen ran temporary wires on the ground around the fire damage in order to restore the signals to service. The T. & T. Linemen inspected their communications wires, but they performed no other work.

The signals operated by means of this temporary arrangement until July 27, 1963, when Carrier assigned to the T. & T. forces the work of making the necessary permanent repairs. They ran new signal wires to replace the temporary ones which the Signalmen installed on July 22.

have strung a span or two of permanent signal line wire, they have done so because of the unavailability of the Carrier's T&T forces, or because the T&T forces had more work than they could handle.

INVOLVED RULES: The rules and agreements pertinent to the proper disposition of this dispute have been previously cited.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that Carrier violated the Scope Rule and Rule 74 of the Agreement when it permitted T. & T. forces on July 27, 1963 to renew three spans of signal wires.

On July 22, 1963, a fire occurred at the Perkins Lumber Yard, Lake Zurich, Illinois, destroying two of Carrier's poles and three spans of signal and communication wire. Three signal employes were called to repair the damage, and since the pole line on which the signal lines were located were used also for telephone and telegraph circuits, two telephone and telegraph linemen were called. The Signalmen ran temporary wires on the ground around the fire damage in order to restore the signals to service. The T. & T. linemen on this date inspected their communication wires, but performed no other work. On July 27, 1963, Carrier made permanent repairs when it assigned T. & T. forces to run new signal wires to replace the temporary ones that the Signalmen installed on July 22 1963.

The Organization's position is that the work performed by T. & T. forces on July 27 was in fact maintenance work which is specifically reserved for Signalmen under the provisions of the Memorandum of Agreement dated November 19, 1956, preserving and perpetuating a division of work provided for in the July 7, 1947 Tripartite Agreement, wherein T. & T. forces will be allowed to construct any new signal lines and Signalmen will be allowed to maintain the signal lines.

The Organization admits that Carrier may assign to others the work of constructing new signal lines as provided for in the July 7, 1947 Tripartite Agreement, which provides as follows:

"TENTATIVE AGREEMENT BETWEEN ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PENDING DEFINITE AGREEMENT AS TO WHICH BROTHERHOOD IS TO CONSTRUCT AND/OR MAINTAIN SIGNAL LINE WIRES.

It is tentatively agreed between the Elgin, Joliet and Eastern Railway Company, the Brotherhood of Railroad Signalmen of America and the International Brotherhood of Electrical Workers that until such time as a definite agreement can be entered into by the above mentioned brotherhoods on the matter of who will construct and/or maintain signal line wires on the Elgin, Joliet and Eastern Railway, the T. & T. forces will be allowed to construct any new signal lines and the signamen will be allowed to maintain the signal lines, without either party making a grievance which would put the Elgin, Joliet and Eastern Railway Company to any additional expense account one party claiming the other party is doing their work.

Signed this 7th day of July, 1947. For E. J. & E. Ry. Co.
For B. of R. S. of A.

/s/ David F. Letts
General Chairman

/s/ W. K. Waltz
Signal Engineer

For I. B. of E. W.

/s/ John H. Barnes
General Chairman"

The Memorandum of Agreement of November 19, 1956, between Carrier
and the Organization, reads as follows:

"MEMORANDUM OF AGREEMENT EXECUTED AT CHICAGO, ILLINOIS, THIS 19TH DAY OF NOVEMBER, 1956, BETWEEN THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, HEREINAFTER REFERRED TO AS THE CARRIER, AND THE BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, REPRESENTING SIGNALMEN.

It is agreed between the parties hereto:

1. The tripartite agreement of July 7, 1947, to which the Carrier, the International Brotherhood of Electrical Workers, and the Brotherhood of Railroad Signalmen of America are parties, hereby is abrogated in its entirety insofar as the Carrier and the Brotherhood of Railroad Signalmen are concerned.

2. The division of work between the Brotherhood of Railroad Signalmen of America and the International Brotherhood of Electrical Workers which has been in effect under the tripartite agreement of July 7, 1947, shall continue in effect until such time as an agreement otherwise dividing the work is reached by the Brotherhood of Railroad Signalmen of America and the International Brotherhood of Electrical Workers which is acceptable to the Carrier. The Brotherhood of Railroad Signalmen of America shall not make a grievance which would put the Carrier to any additional expense account claiming that the International Brotherhood of Electrical Workers is performing their work so long as work is assigned to employes represented by the Brotherhood of Railroad Signalmen of America in accordance with the provisions of this agreement.

BROTHERHOOD OF RAILROAD
SIGNALMEN OF AMERICA

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY

By /s/ E. J. Burman

BY /s/ R. T. Brasel

WITNESSED: /s/ A. D. Penfold, Mediator—

NATIONAL MEDIATION BOARD"

The Organization argues that the work which the T. & T. forces performed on the date in question was a continuation of the maintenance job which the Signal employes started on July 22, and since they started the job,

it was their right under the Agreement to finish it; that it is unreasonable and illogical to assume that it was T. & T. employes' work to place the signal wires up on the poles again after the embers of the fire had subsided; that Carrier's assertion that Signalmen on this property seldom climb poles and string wires beyond one span is without basis inasmuch as the signal line from the block signal system between the Joliet and Marble Falls was built by Signal employes and such work included putting up crossarms, glass insulators, and hardware on the poles; that there is no doubt that Claimants were fully qualified and sufficiently capable of completing on July 27 the maintenance job they started on July 22; that Signal employes suffered a pecuniary loss in at least the amount claimed as a result of this violation.

Carrier's position is that in accordance with the involved Agreements and the long established practice on this property, Carrier on July 27, 1963 directed its T. & T. Linemen (represented by the I.B.E.W.) and its Barrington Signal Maintainer to replace the temporary repair wire and to string, connect and test-out permanent new signal line wires; that on July 27, 1963, the Carrier's T. & T. Linemen set the new poles and crossarms and reeled out and strung new permanent lines, which the Organization's Statement of Claim admits that the signal line wires involved herein were and are permanent lines; that T. & T. forces have performed only the more menial tasks of setting poles and stringing permanent lines; that after the July 7, 1947 Tripartite Agreement, T. & T. forces continued to string permanent new signal line wire, and after said permanent wire was strung, Signalmen would connect the conductors (the wires) to signal apparatus, thereby activating the circuits, and Signalmen would then test out and synchronize the circuits and apparatus; that the instant claim is unique in that it is the only claim of its kind which the Organization has filed since November 19, 1956; that on innumerable occasions since 1956, T. & T. forces have done exactly what is complained of in the instant case.

The International Brotherhood of Electrical Workers have intervened in this dispute and filed a submission before this Board alleging that Electrical Workers represented by their Organization, in keeping with their Agreement have performed the work involved in this dispute; that is, constructed new signal lines.

The determination of this dispute turns on whether or not the work performed by T. & T. forces on July 27, 1963 was construction of new signal lines or maintenance of signal lines. If we find that the work was construction of new signal lines, we must deny the claim. If we find that the work was maintenance of signal lines, we must sustain the claim.

We find that when T. & T. forces replaced the temporary wire strung by Signalmen, they were constructing a new signal line and said work was not maintenance work, as claimed by the Claimants. The record shows that the signal line had been completely destroyed and therefore said signal line was a new signal line, authorized to be constructed by T. & T. employes under the terms of the July 7, 1947 Tripartite Agreement and affirmed by the November 19, 1956 Memorandum of Agreement. The signal line that had been destroyed in the fire had to be completely replaced by new signal line—constructed anew, not maintained or kept in continuance or existence, but completely replaced by new signal line, and therefore within the authorized work of T. & T. employes.

For the aforesaid reasons, we must deny the claim.

Carrier, in its ex parte submission before this Board, stated that the preparation and filing of its submission has cost Carrier \$750.00 (raised to \$1100.00 due to the cost of preparing and filing its answer to the Organization's submission); that under the terms of the November 19, 1956 Memorandum of Agreement, namely: "The Brotherhood of Railroad Signalmen of America shall not make a grievance which would put the Carrier to any additional expense account claiming that the International Brotherhood of Electrical Workers is performing their work so long as work is assigned to employes represented by the Brotherhood of Railroad Signalmen in accordance with the provisions of this Agreement."

We find that the "Cost" clause in the November 19, 1956 Memorandum of Agreement relied on by Carrier for said cost reimbursement by the Organization refers to claims that are vexatious and do not apply to bona fide claims filed in good faith. We further find that the Organization was sincere and acted in good faith when it filed this claim on the close question of whether the work in dispute was "maintenance" work or "construction" work, and therefore Carrier is not entitled to any damages as a result of the filing of this 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 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 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 28th day of January 1972.

Dissent to Award 18958, Docket SG-15474

Award 18958 is in error.

The controlling agreement reserves to Electrical Workers only the construction of new lines, not the replacement of a segment of an existing line. The latter is what took place and gave rise to the dispute erroneously disposed of by Award 18958.

The award being in error, I dissent.

W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member

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