

Award No. 19118
Docket No. SG-14742

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of the Southern Pacific Company that:

(A) That the Southern Pacific Company violated and continues to violate the Signalmen's current Agreement effective April 1, 1947 reprinted April 1, 1958 including revisions) particularly the Scope Rule or other provisions of the agreement and also violates Board Award Number 10730 of the Third Division of the National Railroad Adjustment Board, in not assigning the work of maintaining the Air Compressors which were installed for the purpose of operating the retarder yard at Eugene, Oregon to employees of the Signal Department.

(B) That Mr. W. E. Hill, Signal Maintainer, Coderman, Eugene Yard, Oregon, be allowed one hour at his overtime rate of pay for each week, commencing on October 16, 1962, and continuing until such time as the carrier does comply with the order of the Railroad Adjustment Board which makes Board Award Number 10730 effective October 16, 1962.

EMPLOYEES' STATEMENT OF FACTS: In 1956 Carrier installed an automatic switching (car retarder) yard in its property at Eugene, Oregon. The installation of the compressed air equipment for the operation of the car retarder system was made by Maintenance of Way employees holding no seniority under the Signalmen's Agreement and maintenance of that equipment was subsequently turned over to those same Maintenance of Way employees.

Carrier's Signal Department employees thereupon made a claim for "the installation of the air compressors and the air lines, and the repair and maintenance of same." This claim was progressed and resulted in sustaining Award No. 10730 of the Third Division of your Honorable Board. The Carrier was ordered to place Award No. 10730 into effect on October 16, 1962. In so doing, the Carrier assigned the maintenance of the air compression units and air line to its Signal Department employees.

Under date of November 23, 1962, Carrier issued maintenance instructions to the claimant (Brotherhood's Exhibit No. 1) advising him that:

"Confirming my conversation with you concerning your duties in connection with air compressors at Retarder Yard in Eugene, your duties are listed as follows:

3. By letter dated November 26, 1962 (Carrier's Exhibit "A"), Signalman (Coderman) W. E. Hill (hereinafter referred to as claimant) submitted claim alleging Electrical Department forces performed signalmen's work in connection with the air compressors in the Retarder Yard at Eugene. Carrier's Signal Supervisor denied the claim by letter dated November 29, 1962 (Carrier's Exhibit "B"). Petitioner's Local Chairman appealed the claim by letter of December 23, 1962 (Carrier's Exhibit "C"), further contending that Carrier had not fully complied with the Board's decision in Award 10730, involving a claim between the parties involved herein. The appeal was denied by Carrier's Division Superintendent by letter dated January 3, 1963 (Carrier's Exhibit "D").

Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel by letter of February 7 1963 (Carrier's Exhibit "E"). Carrier's Assistant Manager of Personnel denied the claim by his letter of April 4, 1963 (Carrier's Exhibit "F").

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier installed an automatic switching (car retarder) yard in its property at Eugene, Oregon and was placed into service in August 1956. Installation of the compressed air equipment for the operation of the car retarder system was made by Maintenance of Way employees and maintenance of that equipment was turned over to them.

Carrier's Signal Department employees thereupon made a claim for "the installation of the air compressors and the air lines, and the repair and maintenance of same." The Third Division of N.R.A.B. sustained the above Signalmen's claim in Award No. 10730, and Carrier assigned the maintenance of the air compression units and air lines to the Signal Department employees.

Carrier on November 23, 1962 issued maintenance instructions to the Claimant as follows:

"Confirming my conversation with you concerning your duties in connection with air compressors at Retarder Yard in Eugene, your duties are listed as follows:

1. Mechanical maintenance and lubrication of air compressors and connecting lines.
2. Changing time clock chart or recording chart with records air pressure.

These are the duties that were formerly performed by the water service.

Electricians will perform following work:

They will care for and maintain electric driven motors for compressors. They will also operate electrical controls when alternating compressors. They will maintain electrical motors on cooling system and on water tower. They will also maintain pressure regulators.

This should clarify your duties, but should any further definition be required, please contact this office and do not take it upon yourself to assume any other duties than those defined."

On November 26, 1962 Claimant filed the instant claim on the premise that Electrical Department employees were performing signal work at Eugene Yard.

Petitioner contends that Award 10730 is controlling in this case wherein the Claimant signalmen have an exclusive right to the specific electrical work involved in this claim and that Carrier is not complying with the decision rendered in Award 10730 when it assigns such work to Electrical Department Employees. Further, that the Scope Rule, under the Signalmen's Agreement reserves the work of maintenance of "car retarder systems" to the Signal Department Employees.

Carrier asserts that the work here claimed is not reserved to Signalmen by agreement or other authority on its property and that prior to and subsequent to Award No. 10730, the electric motors and electrical controls used in conjunction with the air compressors were installed and are maintained by electrical employees represented by the International Brotherhood of Electrical Workers. Further, Carrier has complied with the Board's decision in Award 10730 to delegate the work on air compressors and air lines to the Signalmen's Craft.

The Board is called upon to adjudicate a third party issue under the decision of the United States Supreme Court in *TCEU v UP*, 385 US157, 87 S. Ct. 369 (1966) wherein the Board must determine which craft is entitled to the work in question under their appropriate Agreements.

Since the matter here involves a dispute between two crafts, namely, the Brotherhood of Railroad Signalmen and the International Brotherhood of Electrical Workers, an examination must be made of their respective agreements, covering the work in question.

The governing Signalmen's Scope Rule provides:

"This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of * * * car retarder systems * * * and all other work that is generally recognized as signal work."

The governing Electrical Workers' Scope Rule provides:

"Electricians' work shall consist of the following: Testing, inspecting, repairing, rebuilding, wiring, installing and maintaining * * * motors * * * controllers * * * motor generators, * * * automatic switching equipment * * * and all other work generally recognized as electricians work."

An analysis and examination of these two crafts Scope Rules was made by Referee Carter, Award 3999, although the issue there was a jurisdictional question. He stated:

"The manner in which the scope rules of the Signalmen and Electricians are drafted appears of importance in this dispute. Scope rules generally fall within one of two classifications — those which are very general in character and purport to include all work tra-

ditionally performed by the contracting craft, and those which specifically spell out the work included. Whether work falls within the general type of scope rule is dependent upon historical practice and custom and the general nature of the work. Of necessity it is a matter of evidentiary proof. In the specific type of scope rule, one ordinarily examines the rule with a view of finding out if the work in question is described therein. The scope rules of the Signalmen and Electricians are of the latter type. They attempt to spell out the work belonging to each craft.

* * * In view of the meticulous manner in which Electricians work was set forth in the Scope Rule of their Agreement, the failure to specify any work traditionally performed by the Signalmen is very important in interpreting the meaning of the rule. In such case, that which is not stated becomes most significant.

We think, therefore, that an examination of the two agreements reveals that there is a fixed line of demarcation between the work of these two crafts, obscure as it may be." (Emphasis ours.)

In Award 10730, the referee, after an analysis of a car retarder system described in a technical booklet of the Signal Section of the Association of American Railroads, found that the air compressor and air lines leading to the car retarder system were, part of the car retarder system, within the meaning of the Signalmen's Scope Rule.

Both Referee Carter — Award 3999 and Referee Ables concluded however, that when the work in dispute appears to overlap within the two agreements, as the work herein involved, it then becomes a matter of evidence and circumstances governing its primary use or purpose.

ABLES — "In the last analysis, circumstances govern."

CARTER — "* * * it becomes a matter of evidence as to which constitutes its primary use."

We concur with Carrier's position that the record in Award 10730 discloses that the specific work involved in the instant dispute was not involved in Award 10730. However, it is clear from Award 10730 that Referee Ables did make a finding of fact that the power plant of a car Retarder System is an integral, component, functional part of said system, converting the main source of power into power of the proper type whether it be air or direct or alternating current.

Based upon this finding of fact by Referee Ables and an analysis of the circumstances and evidence contained within the record, in addition to prior awards submitted for consideration, we must find that the primary purpose for building the power plant, which includes the electrical apparatus herein involved, was to operate the car retarder system. The electric motors, compressors, etc., provide a source of power for the car retarder system, whether it be air or direct or alternating current, therefore, the work in question rightfully belongs to Signalmen and was covered by their Agreement with the Carrier.

We have examined the scope rules of the two crafts and the work in question is described within the Scope Rule of the Signalmen. Although the Scope Rule of the Signalmen appears general in character, we do not find the

rule ambiguous or that past practice may lessen the effectiveness of a provision of the Agreement wherein the rule provides for the maintenance, repair and construction of " * * car retarder systems * * "

If the Electricians had intended to include any work of maintenance of electric motors and compressors, connected with Carrier's car retarder systems, that intent would be reflected within their Scope Rule. It is not.

As previously stated, it is the opinion of the Board that there is a clear distinction to be made between references to work on "air compressors," involved in Award 10730, and the work on electric motors and electrical controls in the case at bar. In effect, the Employees are pursuing a separate cause of action and it must be treated as such by the Board.

There can be no doubt that the two crafts are involved parties in this dispute, wherein both claim the work in question under their appropriate agreements.

Therefore the Board finds that the work in question rightfully belongs to Signalmen under their Agreement with the Carrier and to this extent, Carrier did violate the Signalmen's Current Agreement as set forth in the first part of Claim (A).

The Board further finds that Carrier did not violate Board Award 10730, as alleged in the second part of Claim (A), as the work was assigned to the Signalmen by Carrier under date of November 3, 1962.

As to Claim (B), Claimant allowed one hour at his overtime pay for each week, commencing October 16, 1962 through November 23, 1962. (compliance date by Carrier with Award No. 10730).

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 1, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Claim sustained in part and denied in part in accordance with the Opinion.

AWARD

Claim sustained in part and denied in part in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.

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