

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19394
Docket Number SG-17363

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated the current Signalmen's Agreement, in particular Rule 1 (Scope), when, some time in the first half of September 1966, it used employees not covered by the Signalmen's Agreement to replace approximately twenty (20) wood crossarms which support signal line wires and are attached to the Ohio River Bridge located at Sciotoville, Ohio. At a later date signal employees were assigned the work of tying back-in the wires located on said crossarms.

(b) Carrier be required to compensate Assistant Signalman Keith A. Cunningham, Identification No. 271316, at Signalman's rate of pay for the comparable time that the Carrier used employees not covered by the Signalmen's Agreement to perform the work defined in part (a) of this claim. /Carrier's File: SG-246/

OPINION OF BOARD: Carrier assigned communications employees, represented by the Electricians to renew the bottom crossarms which carry signal wires (and 110 V electric wires) over the bridge at Sciotoville, Ohio. It resists the Signalmen's claim of Rule violation principally on the ground that at this location, over a fifty year time span, the work of installing or renewing such supports has always been performed by communication employees.

No question arises, in this case, that installation of such crossarms on poles, for signal purposes alone, would be assigned to signalmen. The record is unsatisfactory on this point, but it can also be generally stated that work on other bridges in carrier's system, similar in nature, has been performed by signalmen. As stated, on the property carrier denied the claim on the ground that a specific practice on this bridge required it to assign the work to communication employees. On the property the issue of most importance to a proper determination of the claim, the fact that the bottom crossarm did not carry signal wires exclusively, was never raised by Carrier, even after the organization alleged that they carried only signal wires.

The entire fifty year history of the installation and modification of the brackets and crossarms on the Sciotoville Bridge is contained in the record. It does show that all installation of brackets and arms on this bridge

have been done by communication employees. As interpreted by the Organization, it amounts to only one instance. In any case, the historical record is inconclusive as far as a decision in the case is concerned. It is a localized practice, in general conflict with a Rule and does not persuade the Board that it can prevail over the Rule and system-wide practice.

The difficulty is that carrier's belated entry of the fact that the crossarms also carry 110 volt wires to power navigation lights, and that these wires are installed by a third craft (one that makes no claim to the crossarm work) might well change the result. However, no principle has been more firmly established by the Board than that facts not introduced on the property may not be considered by the Board. The rule is soundly conceived, it furthers the purposes of the RLA and assists the Board's work. It must be applied here.

The International Brotherhood of Electrical Workers, after due notice, has filed a submission in the case. It supports Carrier's assignment and quotes its Rules 32 and 141 in support thereof. Neither Rule is a specific grant of the work in question.

The Board, upon the entire record, as properly before it, finds that Carrier violated the Signalmen's Agreement when it failed to assign the replacement of crossarms on its Sciotoville Bridge to employees covered by that Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.

CARRIER MEMBERS' DISSENT TO AWARD NO. 19394,
DOCKET NO. SG-17363 - (REFEREE EDGETT)

The Neutral in this case states:

"The difficulty is that carrier's belated entry of the fact that the crossarms also carry 110 volt wires to power navigation lights, and that these wires are installed by a third craft (one that makes no claim to the crossarm work) might well change the result. However, no principle has been more firmly established by the Board than that facts not introduced on the property may not be considered by the Board. The rule is soundly conceived, it furthers the purposes of the RLA and assists the Board's work. It must be applied here."

Yet, in Carrier's submission before this Board, it is stated:

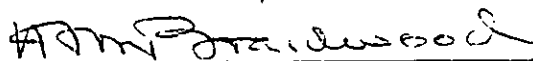
"The Carrier has declined, in handling on the property, claim of the Signalmen for such cross arm work, explaining the historical development of allocation of such work on this particular bridge as outlined above, and the Carrier's position can now be shown." (Emphasis added)


Therefore, these matters were discussed on the property, as pointed out by the Carrier, and were properly before this Board and they should have been taken into consideration in the adjudication of this dispute.

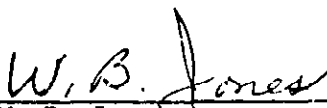
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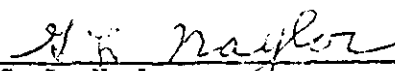
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H. G. HARPER


H. F. M. Braidwood


P. C. Carter


W. B. Jones


G. L. Naylor