NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20181
THIRD DIVISION Docket Number X-19835

Irwin M. Lieberman, 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:

Claim No. 1

(a) The Carrier violated and continues to violate Agreements the Chesapeake and Ohio Railway Company has with the Signalman's Organization, particularly Rule 1 (Scope) and Rule 34 (Seniority District Limits) of the current Signalmen's schedule Agreement; and Article 111, Section 1 of the February 7, 1965 (Stabilization of Employment) Agreement, when, on or about February LO, 1971, it arbitrarily allowed, diverted or otherwise removed work from its signal employes assigned to this district; in particular, work involved in improvements and/or maintenance of the Carrier's MD Cabin interlocking plant Limits Located in Cincinnati, Ohio. As a result of such action, we now ask that:

(b) The Carrier be required to compensate employes named below at their applicable pro rata rates of pay and for a comparable amount of time that other than C&O signal employes were allowed to perform the work cited in part (a) of this claim. Due to this being a continuing violation, we request that said claim continue until such time as the work involved in this dispute is completed and the Carrier takes the necessary corrective action to return such work to the jurisdiction of employes covered in above-mentioned Agreements:

R. S. Kennard, Signal Maintainer
W. B. Royce Assistant Signal Maintainer

(c) The Carrier be required to compensate the above-named employes at their applicable rates of pay and in a comparable amount of time, including calls, that other than C&O signal employes devote to maintenance and/or repairs of signal facilities cited in part (a) of this claim; such Labor to be determined after all work involved is completed and/or returned to C&O signal employes. (Carrier's File: 1-SG-289)

Claim No. 2

(a) The Carrier violated and continues to violate Agreements, including past practice, this Carrier has with our Organization, particularly Rule 1 (Scope) and Rule 34 (Seniority District Limits) of the current Signalmen's schedule Agreement; end Article III, Sec. i of the February 7, 1965 (Stabilization of Employment) Agreement when, on or about May 4, 1971, the Carrier allowed signal work of improving the Gest Street signal facility to be assigned to persons who are not covered under provisions of the above-referred-to Agreements. As a result of such action, we now ask that:

(b) The Carrier be required to compensate signal employes named below et their applicable pro rata rates of pay and for a comparable amount of time that other then C&O signal employes were, or are allowed in the future to perform work cited in pert (a) of this claim. Due to this being a continuing violation, as the work in question has not been completed, we request said claim to continue until such time as the work is completed and/or the Carrier takes the necessary corrective action to return said work to the jurisdiction of its signal employes:

H. D. Hizer	RR ID No.	2280150	D. L. Helmintoller	RR ID No.	2230281
R. C. Erwin	"	2216286	Bryant Rushford	"	2258121
Gilbert Cornwell	"	2261223	L. T. Goins	"	2280454
R. L. Kelley	"	230537	E. H. Adkins	"	231111
W. R. Allen	"	2610391	R. L. McCulley	"	2611724

(Carrier's File: 1-SG-291)

OPINION OF BOARD: The dispute in this matter involves Carrier's actions, in conjunction with three other Carrier's, in expanding end modernizing certain facilities et Cincinatti, Ohio.

Claim 1 involves the installation of a new interlocking facility end related facilities for two track circuits which extended about 410 feet onto B & 0 property end 20 feet on Carrier's property. These circuits had previously, by Agreement dated 1907, been serviced and maintained by Carrier's Signal Department employes. The new installation end maintenance was performed by employes of the B & 0 Railroad, in accordance with a new Agreement, dated February 9, 1971 (which supplanted the 1907 Agreement) between the Carrier, B & 0, CNO & TP, and C.U.T.

We find no merit in Petitioner's position with respect to Claim #1, since the new arrangement involved the return of work to B & 0 employes which had been ceded by that Carrier in 1907. We have taken the position in many Awards, going back to Award 643 in 1938,

that a Carrier has no right to force another Carrier against its will to permit work by the first Carrier on the second Carrier's property. In other words, the Scope Rule cannot extend to work that does not belong to Carrier.

In its allegations on both Claims, Petitioner refers to a violation of Article III of the February 7, 1965 Job Stabilization Agreement. Since there is no discussion of the applicability of that Agreement in the submission end no indication that this matter was timely raised on the property, we shall dismiss this contention (see Award 19370).

By Agreements between Carrier, the CNO & TP end C.U.T., dated November 1933, which superseded earlier agreements going beck to 1902, Carrier was given the responsibility to construct and maintain certain signal facilities at the crossing of CNO & TP tracks with its own tracks area referred to in Claim #2. At about 1929, Carrier constructed a facility, termed en interlocking plant, et this location, Gest Street, on its property, which included two tilting target signals. From that time until the 1971 Agreement between the four Carriers was implemented, the work of maintaining the two tilting target signals had been performed by Carrier's signal employes. It should be noted that the B & 0 does not operate at this crossing and its closest trackage is some distance away, apparently several blocks at Least. In accordance with the February 1971 Agreement between the four carriers, referred to above, the two tilting target signals were retired end a new facility was installed as pert of the overall new interlocking operation, all work performed by B.&O. employes, who also maintain the entire facility.

The record indicates that certain other employes of Carrier did participate in the work involved in the modernization project; their activities were all on Carrier's property, but were related to the project.

The Organization argues that this work was improperly removed from the Carrier's employes in violation of the Scope Rule; that the Labor agreement including the Scope Rule antedates the 1971 agreement among the Carriers ceding the work to B&O employes; and that prior Awards of this Board support its position. Carrier urges that it was impractical to have the work of installing and maintaining the new facility performed in a piecemeal fashion by employes of more than one Carrier; and most importantly that under many Board Awards signal work within a joint interlocking plant belongs exclusively to the signal forces of the Carrier having the contractual

responsibility for the maintenance of such plant, in this case B & 0 employes. It is noted that Carrier's argument on the impracticality of dividing the work was not raised on the property end is at best en unsupported assertion.

We note that both Carrier and the Organization cite the same Awards in support of opposite conclusions. After careful examination of all these prior awards, we have selected several to illustrate the general thinking in analagous situations. In a recent Award, with somewhat differing factual basis, involving the same parties Award 19369, we said:

> "Numerous disputes have been before the Board where two or more rail Carriers have found it necessary end desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed. It has been consistently held chat the work to be performed under such circumstances falls to the Carrier end its employees who by reason of such Agreements between the Carriers, have the superior right or contractual duty to perform it....."

In Award 17160, we said:

> "As a general proposition, the signal work within a joint interlocking plant belongs exclusively to the signal forces of the carrier having the contractual responsibility for the maintenance of such plant."

In Award 11002, involving the installation end maintenance of signal facilities by an agreement which preceded the contract between respondent Carrier and the Organization, we said:

> ". . ..The work to be performed under these circumstances falls to the Carrier and its employes who by reason of such agreements between Carriers, have the superior or contractual duty to perform it.
>
> The contract of 1924 between the two Carriers is inherently different from a contract between a Carrier end some third party where the Carrier seeks to remove from under the contract work which it must perform in the course of its operations and which was its obligations to perform when the agreement with the Signalmen was executed."

One of the early Awards, upon which many subsequent decisions were based is Award 3450. In that dispute we held that Carrier did not violate the Agreement by abolishing certain positions when work was relinquished to another railroad. This conclusion was based on the fact that the work in dispute had been given to Carrier under en Agreement with the other railroad et a date preceding the Agreement with the Organization end the right to terminate the Agreement was exercised by the other road. In Award 3904 the claim was sustained inadispute between the B & 0 end the Signalmen with the same logic es that expressed in Award 3450, except that the Agreement with the Organization predated the new agreement between Carriers diverting the work, In that Award we said:

> "In cases of this nature, closely conflicting questions of fact and interpretation should be resolved, if possible, in favor of the employes of the railroad on whose property the work is to be done. Employes of one railroad should not be permitted to perform work on another railroad to the detriment of the latter's employes unless it can be clearly shown that they are entitled to do the work."

It is noted that the terms "contractual right" or "superior right" as used in prior awards are ill defined and do not adequately distinguish between contracts among Carriers or between the Carrier and the Organization. It is our judgment that both such types of agreements have equal weight; the agreement which is first entered into relating to the work must be controlling.

Based on the facts in Claim #2 end the reasoning expressed in our prior Awards, we are of the opinion that Claimants herein were deprived of their right to improve the Gest Street Signal facilities. Their Agreement with Carrier, es well es many years of practice, predated the 1971 agreement among Carriers ceding the work to B & 0 employees; this action constituted a violation of the Scope Rule of the applicable Agreement.

We note that the B & 0 and the C & 0 have the same overall management. It is a well established principle in contemporary labor-management relationships that it is highly desirable to avoid conflicts, particularly those which arise from Lack of communication. An extension of this principle is that employers generally discuss contemplated changes in operations with their unions before the fact, when such changes impinge on employes contractual rights, in en effort to avoid controversy. Had such practice been employed in this case, in our judgement, the entire conflict might have been avoided, including the substantial attendent expenditures of time and money.

As indicated above we shall deny Claim #1. We shall sustain Claim #2 with the understanding that B & O signal employees have the overall responsibility for the interlocking facility. Therefore the remedy in Part (b) of Claim #2 is restricted to the work involved in the retirement of the two tilting target signals and only new construction, if any, at those locations.

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 violated.

AWARD

Claim #1 is denied: Claim #2 is sustained to the extent provided in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.

Serial No. 281

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 20181

DOCKET NO. SG-19835

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen

NAME OF CARRIER: The Chesapeake and Ohio Railway Company
(Chesapeake District)

Upon application of the representatives of the Employes involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

After careful review of the petition of the Organization for an interpretation of Awards 20181 and 20511, and Carrier's response thereto, we find that the Organization's understanding of the intent of the two Awards is erroneous.

We indicated in both of the Awards a careful restriction of the work in dispute to that which related only to the replacement and subsequent maintenance ". . . involving the new facilities replacing the tilting target signals at Gest Street." The Awards did not contemplate any other work in the overall project accruing to Claimants. As we examine the record herein, it seems that the work has been adequately defined in Carrier's letter dated April 3, 1975 as that involving eight signals which replaced the tilting target signals at Gest Street together with certain specified appurtenances. It was not our intention to include within the remedy any other work on the interlocking facility, and certainly not "all signals and related equipment between C & 0 Mile Post 0 and Mile Post 8.2", or work on C & 0 No. C-l and C-2 tracks between Gest Street and C & 0 Mile Post 0.

Referee Irwin M. Lieberman, who sat with the Division, as a neutral member when Award No. 20181 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1976.