

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20414
Docket Number SG-20079

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Western Maryland Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Maryland Railway Company that:

(a) Carrier has violated the Signalmen's Agreement, particularly the Scope, when, on or about December 18, 1970, a factory wired relay instrument case was installed and placed in service at crossing protection location at Apples Church Road, Thurmont, Maryland.

(b) The following Signal and Communications Mechanics who installed the case now be allowed an amount of time equal to that provided by persons not classified or covered under the Signalmen's Agreement, in performing the factory wiring of the relay instrument case at issue. Such payment to be at their individual applicable rate of pay.

Claimants: A. C. Williams E. v. Williams
C. L. Balthus R. A. Stottlemeyer
/BRS Case No. 3-1971/

OPINION OF BOARD: Carrier purchased a factory assembled highway crossing protection device from the Westinghouse Air Brake Company in order to provide flasher light protection at a crossing at Thurmont, Maryland. The device consisted of a relay instrument case and two flasher light signals. When the device was received it was installed on or about December 18, 1970 by Carrier employes in the Signalmen's craft.

Petitioner takes the position that employes covered by the Agreement should have been used to "fit up and wire the relay instrument case" under the provisions of the Scope Rule. The pertinent provisions of that rule state:

"SCOPE

This agreement covers rates of pay, hours of service and working conditions of all employees classified in Article I of this agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair, and painting of:

"(a) Signals including electric locks, relays and all other apparatus considered as part of the **signal** system, excluding **signal** bridges, **cantilevers**, switch targets, road crossing warning signs, station mile signs, whistle signs, speed signs, and such other fixed signals that are not now **maintained** by signal forces.

* * * * *

(c) Highway crossing protection devices electrically controlled, but excluding traffic lights where local regulations would require installation and **maintenance** by other than Railway Company employees.

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(1) The mounting and wiring of signal apparatus in a field **instrument** case or housing, but excluding such assemblies as can be universally used and be normally furnished by a manufacturer without the Carrier **sup-**
plying specific plans.

(m) All other work generally recognized as signal **work.**"

The Organization argues that the wiring of the relay **in-**
strument case in question does not come within the exceptions of paragraph (1) of the Scope Rule, **This** contention is based on Carrier's purchase order entirely. It is asserted that the relay package in this case was not standard, cannot be universally used and was substantially modified by Carrier's purchase order specifications.

Carrier asserts that the instrument case is a standard catalogue item with standard wiring and ordered by number. Carrier states that there are a series of optional features which can be furnished with the standard stock package **some** of which were ordered in this case. Carrier also states that the term "circuit plans to be furnished" in the purchase order was apparently misconstrued by Petitioner since Carrier always requests vendors to furnish circuit plans when ordering flasher protection cases. Carrier further **states** that the flasher unit involved could be used by any railroad at a similar type of crossing: a main track **and** two sidings.

The issue herein, involving Carrier's right to purchase fully wired and assembled signal apparatus, has been dealt with by this Board in many prior Awards.. Awards 5044, 7833, 7965, 9604 and 11792 support Carrier's position that management has the right to

purchase manufactured signal **equipment** without violating the Scope Rule. **However**, in the case before us the Scope Rule is unique in the provisions of section (1) and **must** be **examined** per se. Nevertheless, as Carrier pointed out, the identical issue involving the **same** parties (but with a different type of crossing and a different type of **unit**) was dealt with by this Board in Award 15577. In our denial decision in that dispute **we** said:

"The equipment in question could be universally used at crossings of the type involved here. **We** therefore find that the Carrier has not violated the Scope Rule of the Agreement.

The Signal Employees did not obtain jurisdiction over the equipment until it was delivered to the Carrier."

In the instant case **we** are not persuaded that the unit was custom made and not "universally used". The purchase order **specifications** are not by any **means** plans or **diagrams** which would permit the custom wiring of a signal unit; modifications of a standard unit are not basic plans. **There** is no evidence in the record of this dispute on the property which in **any** way establishes the fact that this unit was not universally applicable to similar types of crossings.

In addition to the reasoning above, **we** have **long** held that we are not justified in readjudicating an issue, particularly involving the **same** parties and agreement provision, unless there is palpable error. We do not find that Award 15577 was in error and as a matter of sound policy **we** shall adhere to the doctrine of **res judicata**.

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 **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 Claim herein is barred on the basis of res judicata.

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Claim dismissed

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Paulus
Executive Secretary

Dated at **Chicago**, Illinois, this 27th day of September 1974.