NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20783
THIRD DIVISION Docket Number SG-20573

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Long Island Rail Road:

Claim on behalf of each man in signal construction gang, R. D. Johnson, C. J. Temple, D. Martin, H. Holdampf, J. Sottile, A. Klein, J. Fox, E. Racyonlski, A. Bariciano (letter dated December 2, 1972):

That on October 4th 1972, Signalman James Sottile, headquarters Charlotta Avenue, Freight house, Hicksville, New York 11801, Gang 53, was ordered to deliver Electronics Equipment (track circuits) to the Clavier Corporation, Huntington, New York. Upon his arrival at Clavier Corporation it was discovered that the aforementioned equipment, manufactured by M.I.P. Company, a subsidiary of Safetrain Corporation, delivered the Long Island Railroad Signal Department, was being installed in Signal cases that are intended for use on the Amityville, Copiague, Lindenhurst, Grade elimina--ions.

As this practice is in violation of the scope rule, the General Committee demands Carrier pay each man in the signal construction gang (See Attachment "A") eight (8) hours at time and one-half the pro-rata rate, as long as violation continues.

OPINION OF BOARD: Carrier had placed an order with an outside supplier, the Clavier Corporation, to furnish signal instrument cases to be installed on the Amityville, Copiague, Lindenhurst Grade Elimination project. On October 4, 1972 one of the Claimants was instructed to deliver track circuits manufactured by M.I.P. Company, which had been delivered to Carrier's Signal Department, to the Clavier Corporation.

Petitioner contends that the wiring of the signal cases by an outside contractor was in violation of the scope rule of the Agreement. It is argued that the units in question were in possession of the Signal Department and then were given to an outsider to assemble, which distinguished this situation from other related disputes involving equipment purchased, which have been dealt with by this Board. The Organization also asserts that Carrier is incorrect in its statement that it always purchased pre-assembledcomponents; it is stated that signal forces had performed the work in question at every grade crossing elimination in the past.

In this instance, Carrier asserts it acted as a purchasing agent for its prime contractor, the Clavier Corporation, which does not change its long established right and practice of buying preassembled components. Carrier states that the scope rule does not provide that Signal Department employes will manufacture equipment and that its past practice has been to buy pre-manufactured and assembled components and equipment and have the equipment installed by its own signal employes. Carrier argues that the scope rule encompasses "installation and maintenance" and "repair and adjustment" of signal equipment, but not manufacture.

The scope rule provides:

"SCOPE

These Rules, subject to the exceptions hereinafter set forth, shall constitute an Agreement by and between Wm. Wyer as Trustee of the Long Island Rail Road Debtor and Telegraph and Signal Department Employes of the aforesaid Debtor Company of the classifications herein set forth engaged in the installation and maintenance of all signals, interlocking*, telegraph and telephone Lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, car retarder systems, electric strip type switch heaters and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone. or signal work--represented by the Brotherhood of Railroad Signalmen of America and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes of the aforesaid Debtor Company specified herein, namely, foremen, assistant foremen, leading maintainers, Leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, signalmen, assistant signalmen, and helpers."

The Scope Rule in this dispute is general and does not per se reserve the work described to employes covered by the Agreement. The exclusive right to the work in question can only be established by a showing of a history of system-wide practice and custom; this evidence has not been presented by Petitioner and has been denied by Carrier. The Organization cited Award 6664 in its argument before the Board as an example of a closely related factual situation. In that case, however, we said: "...That the work of

fitting up and wiring instrument houses in C.T.C. systems has been customarily and traditionally performed by Signalmen on this property is established by the practice shown by the employes." That showing has not been made in this dispute. In Award 12553, also cited by Petitioner, we reviewed prior awards dealing with factory wired equipment and stated, inter alia: "It appears to be the consensus of the awards that seniority rights to work does not attach until the material or equipment upon which the work is to be performed is once delivered to the Carrier." In the instant dispute the material upon which the work was to be performed was the finished assembly and the mere receipt and forwarding of the track circuits for final assembly does not change the basic concept expressed in Award 12553. It must also be noted that there has been a long line of awards dealing with substantially similar factual situations as that herein, including, among others, 5044, 9604, 13703, 15577 and 16124, which have held for the Carriers therein.

Accordingly, since there is no evidence in the record establishing a relevant practice on this property supportive of Petitioner's position, and since we concur in the reasoning in the awards cited, the claim must be denied. We do not deem it necessary to deal with the procedural issues raised by the Carrier in view of our conclusion.

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.

A W A R D

Claim denied.

NATIOWALRAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: & & Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1975.

Dissent to Award 20783, Docket SG-20573

The Majority has here attempted to distinguish that which, to those who are familiar with both the equipment involved and the principles embodied in the pertinent precedent Awards of this Board, is indistinguishable, and to liken things which, to the same people, cannot be likened. None of those who compose the Majority number among those people, and it is only for this reason that the Majority's Award is not a blemish upon it.

I dissent.

W. W. Altus, Jr.
Labor Member