NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21283

THIRD DIVISION Docket Number SO-21243

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Robert W. Blanchette, Richard C. Bond
( and John H. McArthur, Trustees of the
( Property of Penn Central Transportation
( Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo):

system Docket W-47
Southern Region - Southwest Division Case No. 1-74

Claim in behalf of Signal Maintainer M. E. Bey for eight (8) hours at the pro rata rate in each work week account he was and is deprived of performing work that accrues to him on a 7.33 stretch of track located between Spring Hill and Riley, Indiana, commencing on December 24, 1973, inclusive and continuing, such deprivation of work in violation of the Scope of the current working agreement.

OPINION OF BOARD: This claim involves the work of once-a-month inspection of flashers at a highway crossing on 7.33 miles of track between Spring Hill, Indiana and a point south of Riley, Indiana. Claimant M. E. Handley held a position of Signal Maintainer headquartered at Oakland, Indiana and, a6 part of his duties, once each month inspected the crossing flashers at State Highway No. 159. By a proposed lease agreement dated September 17,1973 the Carrier herein, owner of the'track end right of way in question, leased same to the Louisville and Nashville Railroad company. That lease agreement provided for maintenance, operation and use by the L&N of the 7.33 miles of track for the purpose of moving coal from the Chinook Mine near Riley, Indiana to the L&N's mainline track near Spring Hill and thence to the American Electric and Power Company steam plant at Breed, Indiana. This agreement subsequently was approved by the Interstate Commerce Commission, over the protests of affected labor organizations and with the imposition of the New Orleans Union protective conditions, in ICC Finance Docket No. 27624 (June 27, 1974).

By letter dated December 7, 1973 Carrier informed the General Chairman of the Organization of the above lease agreement a6 follows:

"This letter I.6 to inform you that Penn Central ha6 granted the Louisville & Nashville Railroad (ex. C&EI) to enter upon PC (CCC & St. L. Ry.) property between . Spring Hill and Riley, Indiana to maintain and renew

"trackage, construct the necessary connections etc. under the same terms and conditions contained in the proposed lease agreement. That this grant shall be considered supplemental to and in conjunction with the formal lease agreement and is entered into pending finalization of said lease agreement and will be considered terminated with the finalization of said lease agreement.

The territory involved is EI&TH Valuation Section 8717+90 (approximately I.20 ft. east of the crossing of the main tracks of the parties) and Valuation Section 9104+81, a distance of 7.33 miles.

The L&N during the term of the lease care for, maintain, renew the leased premises at Lessee's sole cost and expense. Accordingly, Penn Central C&S employes will not have responsibility for Signal and Communication facilities within the above stated limits effective with the end of the tour of duty on December 21, 1973."

The General Chairman protested this proposal by letter of December 13, 1973 reading in pertinent part a6 follows:

"I am particularly disturbed by the last paragraph of your letter, wherein you advise that Penn Central C&S employees will not hare responsibility for Signal and Communication facilities within the limits of the lease, effective with the end of tour of duty on December 21, 1973.

Employees represented by this organization, currently perform work on related equipment accruing to them on this portion of railroad.

We expect them to continue performing this work now and in the future, because under present agreements, they are contractually entitled to it, and these agreement6 are still in full force and effect, lease or no lease.

Please acknowledge and advise of your position concerning work relating to our Scope Rules."

The lease arrangement went forth a6 scheduled, L&N signal employes began performing the work on or about December 24, 1973 and the instant claim was filed on January 10, 1974 alleging a violation of Rule 1, the Scope Rule of the agreement between Carrier and the Brotherhood of Railroad Signalmen.

We have studied the record and the myriad award6 cited by the parties and must conclude that the claim is without merit. None of the several theories advanced by the Organization will support this claim. This simple lease agreement is not a "consolidation" or a "coordination" as those term6 are understood in Interstate Commerce Commission rulings or railway labor law. Even if, arguendo, a Washington Job Protection Agreement question were at issue herein, and it is not, the proper adjudicatory forum is elsewhere. Nor does the record support a conclusion that the Scope Rule was violated. The evidence shows no impropriety in the making of the lease agreement, Carrier thereby relinquisher right of dominion and control to L&N for the term of the lease, L&N is obligated to maintain and operate the track and right of way, and L&N enjoys sole right to the use and enjoyment of the leased track. It is true that Carrier retain6 title and ownership of the property but all of the indicia of dominion and control legally are vested in L&N until the lease expires. In these circumstances it must be found that legally and practically the Carrier herein ha6 neither the right, the obligation nor the power to assign the work to it6 own employes. A number of Award6 involving subcontracting of work, while not directly on point herein, support by analogy Carrier's position that the Scope Rule doe6 not apply to cases where the work at issue is not within Carrier's direction or control, and not at its expense or for its benefit. gee Award6 20639, 20529, 20280, 20644, et al. But we al.60 have prior award6 which deal directly with the question of leasing and Scope Rule claims, to wit:

> "We think the mere fact of ownership of property by the Carrier is not sufficient ground for Claim by the Organization of application of contract rights thereon. The common business of the Carrier and Organization is railroad operation, and it is to that business and the property employed in that business alone, that their Agreement6 apply. Where property is 60 used no lease or other device should exclude the Operation of the Agreement thereon, and where a Carrier owns property used not in the operation or maintenance of it6 railroad, but for other and separate purposes, such property is outside the purview of the Agreement. The leased warehouse here involved was leased and used for purposes excluding it from the Agreement."
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> AWARD 4783

* * * *

> "There is no question a6 to the nature of the work in this dispute. It is clearly signal work which accrue6 to that cl666 of employes. The issue, however, is whether the work was properly assigned to Norfolk and

'Western Railway Company employes, or whether it should have been performed by Pennsylvania Railroad employes. In short, we must determine whether the work involved was subject to the Agreement between the Pennsylvania Railroad Company and the Brotherhood of Railroad Signalmen.

The Scope Rule ha6 no application to the situation in the instant case because the Norfolk and Western Railway Company owns the signal equipment and maintain6 it by it6 own Signal Department employer,. Moreover, the signal6 are located on land belonging to or leased to it by the Pennsylvania Railroad Company. With respect to the allegation that Carrier produced no satisfactory evidence to show that the land had been leased to the Norfolk and Western Railway Company, we find that there was 6 verbal agreement and understanding prior to the performance of the work in question which culminated in the written lease dated May 19, 1959. We are satisfied, therefore, that the land was leased to the Norfolk and Western Railway Company. The Scope Rule cannot extend to work that doe6 not belong to Carrier;it applies only to that work Carrier ha6 the power to offer. The fact that the Pennsylvania Railroad jointly used the facilities doe6 not bring these and the employes who installed and operated then under the Scope Rule."

AWARD 13056

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"The allegations of fact upon which the denial of the claim. was barred were not challenged on the property by Claimants. Under the authority of Award4783 we hold that since the record reflect6 a lease of property for the use of lessee and notfor the railroad, maintenance work done by lessee in fulfillment Of it6 obligation is not within the scope of the Agreement between Claimants and Carrier."

AWARD14641

See also Award 19639 and award6 cited therein.

We hare not been shown that the foregoing award6 are palpably erroneousor inapplicable herein. Applying the established principle6 which they contain to this dispute we have no alternative but to deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole . record and all the evidence, finds and hold6:

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.