

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22278**
Docket Number SG-22303

Nathan **Lipson**, Referee

(Brotherhood of **Railroad** Signalmen
PAKCES TO DISPUTE: (
(Toledo, Peoria & Western Railroad Company

STATEMENT OF CLAIM: "**Claim** of the General **Committee** of the Brotherhood
of **Railroad** Signalmen on the Toledo, Peoria &
Western Railroad Company:

On behalf of Signal Maintainer Kenneth C. Carl for 2.67 hours
at the overtime rate account not being called the night of May 2, 1977,
to change radios on units 1000 and 902 (**work was** performed by **TP&W**
train crew)."

OPINION OF BOARD: On April 1, 1976, this Carrier acquired from the
estate of the Penn Central Corporation approxi-
mately fifty-five (55) miles of main line and other trackage from
Effner, Indiana to Kenneth, Indiana. Also included in this package
was trackage rights over the newly formed Consolidated Rail Corporation
from Kenneth, Indiana to **Logansport**, Indiana, approximately six (6)
miles. Both acquisitions were made pursuant to the Regional Rail
Reorganization Act of 1973.

Carrier and Conrail entered into an agreement conveying the
property and granting the joint trackage rights agreement. Among the
matters germane to the facts of this case is that Conrail agreed to
perform necessary servicing and **running** repairs to Carrier's
locomotives and cabooses while they were on Conrail's property at
Logansport.

On May 2, 1977, the claim date, radios on **TP&W** locomotives
1000 and 902 were defective and changed at Logansport. However,
contrary to the terms of the operating agreement, Carrier's own train
crews changed out the radios on these two locomotives. A claim was
filed by the Signalmen's Organization, and it is before us.

Petitioner argues that Carrier could not enter into an
agreement which would remove this work from the scope of the agreement,
and argue's that previously, Carrier has sent **TP&W** signalmen onto the

property of Conrail to perform this work. Carrier, while not denying this has happened, argues that **notwithstanding** the foregoing, the joint agreement with Conrail makes this **work of** Conrail **employees**. However, **Carrier** does **not** argue that when work of this nature is performed on their own property, the work does not belong to Signalmen.

This Board has oftentimes looked with approval at such **joint** operating and joint facilities **agreements** and arrangements, **recognizing** that the owning railroad has the right to **insist** that work being performed on their **property** should be Performed by their **employees** and not the **employees** of the visiting railroad. We see nothing wrong with the Agreement entered into here, and note the following **findings** of Award 407 of Special Board of Adjustment **570**:

"The evidence in the record shows, without serious contradiction, that it has been an operating practice not only between the C&O and **B&O**, but in the industry generally, that necessary **running** repairs are performed by the carrier on whose property the equipment is **being operated**."

In this case, however; the problem is that notwithstanding Conrail's contractual right to perform the work, it was **performed by employees** of Respondent Carrier. Since there was no dispute that if work of this nature is performed by the **TP&W**, it is performed by Signalmen, we **must** conclude that, as Petitioner has pointed out, it should have been performed by Claimant. We therefore find that, under these unusual facts and circumstances, Claimant's contractual rights were violated and we will sustain the claim.

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

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That the Agreement was violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this **12th** day of **January 19'79.**