

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23876
Docket Number **SG-23315**

George E. **Larney**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "**Claim** of the General **Committee** of the Brotherhood of Railroad Signalmen on the former Texas & Pacific Railway Company :

On behalf of **Signalmen** J. E. McCarty, B. M. Blackman, and D. B. McCarty, for eighty hours' each at their respective rates, account on September **14, 1978**, 10 U.T.B. relays were shipped off the former Texas & Pacific Property for repair at Sedalia, Missouri." (Carrier file: **K 315-175**)

OPINION OF BOARD: The Organization has progressed the instant claim having to do with transfer of repair work on ten (10) GRS-type U.T.B. signal relays, based on the contention such transfer of work was violative of the Signalman's Scope Rule contained in its controlling Agreement with the Texas and Pacific Railway **Company**, bearing effective date of **May 1, 1957**. We note from the record evidence however, that prior to the origination of this instant claim, the Texas and Pacific Railway Company merged with the Missouri Pacific Railroad Company into a "single system". In so merging the parties became subject to the various provisions of Mediation Agreement A-7128, effective February 7, **1965**, which **among** other things **provides** for the following:

ARTICLE VI

"SECTION 2. In the event of **merger** or consolidation of two **or more** carriers, parties to this Agreement on which this agreement is applicable, or parts thereof, into a single system subsequent to the date of this agreement, the merged, **surviving** or consolidated carrier will constitute a single system for purposes of this agreement, and the provisions hereof shall apply accordingly, and the protections and benefits granted to employees under this agreement shall continue in effect."

ARTICLE III

"SECTION 1. The Organizations recognize the right of the Carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this **Agreement** the Carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines."

ARTICLE VII: DISPUTES COMMITTEE

"SECTION 1. Any dispute **involving** the interpretation or application of any of the **terms of** this agreement and not settled on the carrier may be **referred** by either party to the dispute for decision to a **committee** consisting of two members of the Carriers' Conference **Committees** signatory to this agreement, two members **of** the Employes' National Conference **Committee** signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the **committee** shall be necessary to decide a dispute, provided that if such partisan **members** are unable **to reach a** decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute.

SECTION 2. The parties to this agreement will select a panel of three potential referees for the purpose of disposing of disputes pursuant to the provisions of this section. If the parties are **unable** to agree upon the selection **of** the panel of potential referees within **30** days of the date of the signing of this agreement, the National Mediation Board shall be requested to name such referee or referees as are necessary to fill **the** panel within five days after the receipt **of** such request. Each panel **member** selected shall serve as a member of such panel for a period of one year, if available. Successors to the members of the panel shall be appointed in the **same manner** as the original appointees.

SECTION 3. Disputes shall be submitted to the **committee** by notice in writing to the Chairman of the National Railway Labor Conference and to the **Chairman** of the Employes' National Conference **Committee, signatories** to this agreement, who shall within 10 days of receipt of such notice, designate the members of their respective **committees** who shall serve on the **committee** and arrange for a meeting of the **committee** to consider such disputes as soon as a panel referee is available to **serve**, and in no event **more** than 10 days thereafter. Decision shall be made at the close of the meeting if possible (such meeting not to continue for **more** than five days) but in any event within **five** days of the date such meeting is closed, provided that the partisan members of the **committee** may by mutual agreement extend the duration of the meeting and the period for decision. The notice provided for in this Section **3** shall state specifically the questions to be submitted to the **committee** for decision; and the **committee** shall confine itself strictly to decisions as to the questions so specifically submitted to it.

SECTION 4. Should any representative of a party to a dispute on any occasion fail or refuse to meet or act as provided in Section 3, then the dispute shall be regarded as decided in favor of the party whose representatives are not guilty of such failure or refusal and settled accordingly but without establishing a precedent for any other cases; provided that a partisan member of the **committee** may, in the absence of his partisan colleague, vote on behalf of both.

SECTION 5. The parties to the dispute will **assume** the **compensation**, travel expense and other expense of their respective partisan **committee** members. **Unless** other arrangements are made, the office stenographic and other expenses **of the committee**, including compensation and expenses **of the referee**, shall be shared equally by the parties to the dispute."

Carrier has taken the position that given the **above** quoted provisions, the instant dispute falls within the jurisdiction of Special Board of Adjustment No. **605** and therefore the Third Division of the Adjustment Board is without authority to rule on the case at bar. As additional support for its position, Carrier has cited **numerous** Third Division Awards upholding the jurisdiction of Special Board of Adjustment No. 605 in comparable matters such as the one here under consideration. We find **in** our review of these awards Third Division Award 19723, to be particularly pertinent and representative of our thinking relative to the jurisdiction issue. In Award 19723, we held:

"Carrier urges that the matter be referred to the Disputes **Committee** provided for in Article VII of that Agreement. In a long line of cases we have held '... that when the determination of a dispute **is** dependent upon the interpretation or application of the February 7, **1965** Agreement, that procedures established and accepted by the parties themselves **for** resolving disputes under that Agreement should be respected.' (Award 17625) **Contrary** to Petitioner's argument that the terms **of** Article VII, Section 1 are permissive (**Supported** by Award **18071**), we will reaffirm those awards (**19295, 19371, 18602, 19166, 19289, 18925, 18602** and a host of others) which hold that the proper forum for resolving disputes arising from the February 7, **1965 Agreement** is the Disputes **Committee** established **under** that Agreement. In this case the issues cannot be resolved without an appropriate interpretation under that Agreement."

We reaffirm here what we said in Award 19723, and accordingly therefore, we rule to dismiss the instant claim based on our lack of jurisdiction to decide the issue in dispute.

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 claim must be dismissed,

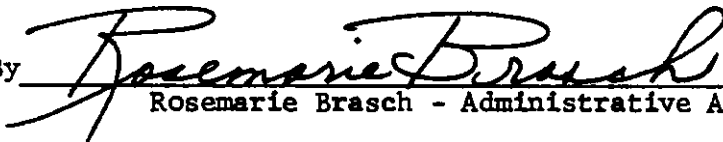
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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated 'at Chicago, Illinois, this 13th day of **May**, 1982.

