

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (UP):

On behalf of R. E. Lee for four hours pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it allowed or permitted a Communication employee to install equipment at D.E.D. - H.W.L. detector equipment, on January 9, 1986." Carrier file 870522G.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of the dispute, filed a Submission with the Division, and appeared at the Referee hearing.

This case involves a jurisdictional dispute over work surrounding the installation of so-called "talk-on" hot box detector equipment.

The Organization asserts that the notification was always performed through a signal system historically and traditionally installed and maintained by employees represented by it.

Carrier denies that installation and maintenance of radios is reserved to the Organization.

The IBEW appeared as a Third Party participant and claimed exclusive rights to the work pursuant to its Agreement and cited Second Division Award 7774 and Award 1 of Public Law Board No. 3828.

Repeated reviews of the record as well as the cited authority compels the conclusion that there is simply no easy solution to this question.

Award No. 1 of Public Law Board No. 3828 (dated May 20, 1986) cites Second Division Award 7774 but makes no reference to Award 4, Public Law Board 3622 (dated January 20, 1986) concerning a different Carrier.

Public Law Board 3622 was cited and relied upon by the Organization from the outset of this dispute. The Agreement there, as here, referred to installing detector devices. That Award found that a radio was substituted to transmit the warning signal to the train crew instead of a flashing light and that it did not change the sole purpose of the detector system, but was merely a technological advancement. It considered and dismissed the IBEW's Third Party contention similar to the one presented here.

The Carrier, of course, argues that neither Organization has exclusive jurisdiction over the work and it may assign same as it sees fit.

We are persuaded by the conclusions set forth in Award 4 of PLB 3622 and its subsequent Interpretation and we will sustain the Claim.

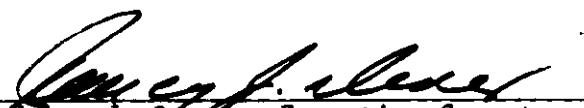
The record raises the fact that the Claimant was fully employed at the time and that no monetary damages should be awarded. Without departing from the concepts outlined in Third Division Award 19899, we recognize that this is a close case and Carrier was faced with the difficult and conflicting jurisdictional Claim. Thus we will decline to order compensation.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devitt - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.