

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of T. A. Hildebrand, G. L. Burch, R. E. Stegall, D. Smith, K. L. Dixon, T. M. Weil, R. M. Hinton and R. Howard; claimants.

A. Carrier violated the current Signalmen's Agreement of 9/1/81 particularly (sic) the 'Scope' which states in part; ... construction, installation, repair, inspection, testing... of the following signal equipment and control systems including... Remote control of switch and signal systems...

B. Carrier violated the 'Scope' which further states in part; The following items of work on the former railroad indicated will continue to be performed by employees represented by the Brotherhood of Railroad Signalmen: Pennsylvania Railroad, ... and Dayton Union Railway Company. Installation and Maintenance (sic) of all Telegraph and telephone lines and equipment... (entire Scope reproduced and enclosed)

C. The work of installing and maintaining cable at former Dayton Union Railway Co. has in the past and on the effective date of our Agreement accrued to B.R.S. represented employees. (documentation enclosed)

D. The work claimed has for many years accrued to B.R.S. employees by agreement between the former Dayton Union Railway Co. and the B.R.S. (documentation enclosed)

E. The cable involved in the work was to contain a 'code line'; part of the remote control of switch and signal systems and communication lines, referred to in parts A. & B. above.

F. Carrier should now compensate claimants 120 hours each at the applicable straight time rate.

G. Carrier's actions constitutes a loss of work opportunity." Carrier file SG-37.

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 (IBEW) was advised of the pendency of this dispute and filed a Submission with the Division. The IBEW also appeared before the Board with the Referee present.

Between July 25 and August 11, 1988, the Carrier used employees working within the Scope of the IBEW Agreement to install underground cable on the property of the former Dayton Union Railway, one of the predecessor carriers of the Consolidated Rail Corporation. This cable, which originated on the former New York Central Railroad property, another predecessor carrier, served both the signal and the communication systems. The Organization asserts that cable work performed on the former Dayton Union property accrues exclusively to employees represented by the Brotherhood of Railroad Signalmen.

The Organization relies upon the September 1, 1981, Agreement, which contains the following provisions as part of its Scope Rule:

"The following items of work on the former railroad indicated will continue to be performed by employees represented by the Brotherhood of Railroad Signalmen:

Pennsylvania Railroad, Pennsylvania Reading
Seashore Lines and Dayton Union Railway Company.

Installation and maintenance of all 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).

Installation, maintenance and repair, and testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply (when such compressors, sets or

power supply are used wholly or primarily for telegraph and telephone devices, apparatus or lines, and are individually housed in Signal or telegraph and telephone facilities) which are part of the telegraph and telephone systems, to the extent that such work is not being performed by employees of the Communication and Signal Department.

It is understood and agreed in the application of this Scope that any work specified herein which is being performed on the property of any former component railroad by employees other than those represented by the Brotherhood of Railroad Signalmen may continue to be performed by such other employees at the location at which such work was performed by past practice or agreement on the effective date of the Agreement; and it is also understood that work not included within this Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of the Agreement."

The Organization avers employees covered by the BRS Agreement have historically performed all cable installation work on the former Dayton Union property. It supports this assertion with a statement from a Foreman in Communication and Signal attesting that such work was performed at least as early as May 1974. It further submits that the former Dayton Union did not have an Agreement with the IBEW nor did it have any IBEW represented employees. Finally, the Organization states the primary purpose for the cable in question was to serve the signal system. For this reason, the Organization argues Claimants should have performed the work.

The Carrier concedes employees under the Scope of the BRS Agreement perform cable repairs within Dayton Union Terminal, but asserts this is limited to former Dayton Union and former Pennsylvania Railroad (another predecessor carrier) cable. Cable originating on the property of the former New York Central has historically been repaired and/or replaced by members of the IBEW, according to the Carrier. Therefore, concludes the Carrier, this is work which may remain with the IBEW employees in accordance with the September 1, 1981, Agreement. In its Statement of Facts, however, the Carrier says:

"Prior to the Penn Central merger, Dayton Union Terminal was at a point crossed by both former PRR and NYC. Dayton Union has its own signal force represented by BRS. Signal and communication cables originating on the respective Carriers was (sic) installed and serviced by the separate Carriers, such cables terminating on junction boxes within the Dayton Union depot, where the Dayton Union Signalmen completed the run of communication and signal circuits in the various signal and communication in use."

The IBEW, for its part, argues it has employees within the Scope of its Agreement who have retained prior Dayton Union Railway seniority rights on a new regional Seniority District #14. The record shows, however, that these employees are shopcraft employees rather than linemen. Additionally, the IBEW relies upon the Scope Rule of its Agreement with the Carrier. This Rule contains language similar to the provision in the BRS Agreement concerning the continuing right of employees in other crafts on component railroads to perform the work which had been theirs either by practice or by Agreement.

It is evident the intent of the September 1, 1981 Agreement was to maintain the status quo with respect to work being performed on the various component railroads, i.e., those employees who performed specific work prior to the effective date of the Agreement would be permitted to continue to perform such work at the same location. Based upon the record before this Board, including the Carrier's above statement, we conclude the installation, repair and maintenance of both signal and communication cables was work performed exclusively by employees under the Scope of the BRS Agreement when such work was performed between the junction box and the signal or communication device. For cable up to the junction box, however, the Organization has failed to meet its burden of proof that such work was performed exclusively by employees under the Scope of its Agreement. While the one statement offered by the Organization establishes such employees performed the work, it falls short of suggesting the work was performed by no one else. On the other hand, the Carrier has documented cable work being performed at Dayton by employees under the IBEW Agreement in 1979.

In the resolution of this dispute, the issue of whether or not employees under the IBEW Agreement have the exclusive right to install, repair and maintain the cable up to the junction box need not be addressed. It is sufficient to find such work is not reserved to the Claimants. It should be noted that, in reaching this conclusion, the Board has rejected the Organization's argument that the Claimants had the exclusive right to perform the work because the cable was primarily for signal purposes. We find no contractual basis for the Organization's position. The fact remains that the cable served a joint function.

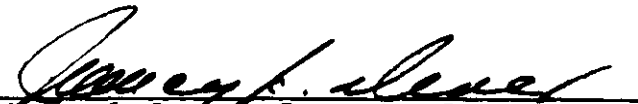
The disposition of the claim, therefore, is dependent upon the location at which the work was performed. If the work was performed before the cable reached the junction box, the Agreement was not violated and the claim should be denied. If, however, it was after the junction box, the work should have been performed by the Claimants and the claim should be sustained. The record before the Board does not indicate where the work was performed with respect to the junction box. This information should be readily ascertainable from Carrier records. The claim, therefore, is remanded to the parties to make that determination and dispose of the claim in accordance with the above Findings.

A W A R D

Claim remanded to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.