Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29070
Docket No. SG-28690
91-3-89-3-105

The Third Division consisted of the regular members and in addition Referee George S. Roukis 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 H. J. Jenkins and D. K. Brant, for payment of 40 hours pay each, at their respective punitive rates of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it allowed or permitted IBEW employees to install and construct a Communication System at Buckeye Yards, in Columbus, Ohio, beginning on November 3, 1987." Carrier file: SD-2500.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The central question in this dispute is whether the installation of the Microwave Communications System at Buckeye Yard in Columbus, Ohio, accrued to the Signalmen's craft or whether such work accrued to members of the IBEW craft. A Referee Hearing was held at the Board offices on June 10, 1991, at which time the IBEW, as a Third Party of interest presented arguments germane to its position.

According to the claim filed by the Signalmen's craft, hereinafter referred to as the Organization, members of the IBEW installed and replaced the existing communication circuits between the cameras and monitors at Buckeye Yard "beginning on November 3, 1987." The Organization maintains that

what actually occurred was the removal of existing carrier communication circuits and the installation or replacement thereof of microwave type communications, which merely reflected a change to communicate information from the cameras to the monitors. Since the replacement of the communications equipment did not change the function of the communications system, but instead was an integral part of it, the Organization contends that the changed technology of the system does not modify the function. In other words, it asserts that the communication system by its very nature is an electronic system of complex technology. Furthermore, it points out that while IBEW employees install and maintain radios in trains and trucks for voice communication, the instant dispute does not involve voice communications. The microwave communication system is not a radio, but a carrier of information that utilizes radio and microwave technology. It also asserts that since the function of the equipment and/or the character of the work determines whose work and what Agreement it belongs to, the removal of the former circuits and the installation of the microwave type communications circuits should have been performed by Signal employees and it cited Third Division Awards 8217, 864 and Award 4 of Public Law Board No. 3622 as dispositive of its position that the character of the work and the purposes for which it is performed determines whether it is embraced in an Agreement Scope Rule.

Carrier contends that after the installation of a complex microwave system which was performed by an outside contractor, IBEW employees installed microwave radio circuits between cameras at the North and South ends of the yard and monitors in the hump building at Buckeye Yard, Columbus, Ohio. This allowed for significant improvement in the picture quality for transmission of the hump lists to the monitors. Accordingly, since the microwave circuits converted the method of transmission from the previous wire cable to wireless microwave radio transmission, Carrier maintains that said work accrues to the IBEW craft because it involves a radio circuit system. It also cites Public Law Board No. 2543's Award, Third Division Award 25545 as on point Awards. (The Board takes judicial notice that there was no Award or Case Number on the PLB 2543 Award.)

The IBEW as a Third Party of interest contends that any work related to radio technology is performed by electricians, which in this instance is a radio microwave system transmitting speech and other sounds through space without wires by means of electromagnetic waves. It cited Second Division Awards 7773, 7774, and 9277 as supportive authority.

In considering this case, the Board concurs with Carrier's position. In a very recent Award involving the same parties and a similar adjudicative issue, the Board held that the Scope Rule was general in nature and did not cover specifically the contested work involved in that dispute, namely the construction and installation of a microwave system. The Board noted that the Organization did not demonstrate by custom, tradition or practice on a system-wide basis that said work was exclusively performed by Signalmen and also

concluded that the microwave system was not a radio system but a system involving radio technology. (See Third Division Award 28739.) Since the work herein involves radio technology work and since there has been no showing that said work was exclusively performed by members of the Signalmen's craft and since the microwave circuits installed changed the method of transmission from wire signals to wireless radio technology, this Board is constrained to find for Carrier. We have carefully examined the fact circumstances and reasoning in Third Division Award 28739, the Award of Public Law Board No. 2543 and Award 4 of Public Law Board No. 3622, but we find the first two Awards more relevant and persuasive with respect to the specific facts herein. Upon this record, we find no basis for sustaining the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1991.

LABOR MEMBER'S DISSENTING OPINION

Award No. 29070 Docket No. SG-28690

In this Award the Majority narrowed its error by ruling that the Scope Rule did not specifically cover the contested work involved in this dispute. The work, however was retained by the preservation clause which states that work, (i.e. existing communication circuits) being performed on former component railroad properties (in this case the former Pennsylvania Railroad) will continue to be performed by Signalmen.

The Majorities attempt, however, to read into this dispute that a change from "wire signals to wireless radio technology" is a basis to allow a transfer of work from one craft to another is a misreading; not only of the agreement language, but of the long established precedent to the contrary.

Specifically, the majority supports its decision with the reasoning that the disputed work was not shown to be exclusively performed by Signalmen on a system wide basis. The facts however, indicate that communication work was reserved to Signalmen on part of the Carrier and to Electrician's on the remainder. The fact that the work is reserved on a portion of a carrier's property by contract (the preservation clause) demonstrates the impossibility of showing that such work was "exclusively performed by members of the Signalmen's craft" on a

system wide basis. Moreover, exclusivity is not an issue where specific contract language reserves work to Signalmen or any other group of employees.

The record in this dispute was unrefuted, that the claimed system was exclusively installed and maintained by Signalmen.

It was also unrefuted that the disputed work was performed on the former Pennsylvania Railroad property. The contract preserves for Signalmen "communicating systems" on this carrier on the above named former railroad property.

The majorities reliance on Public Law Board 2543 and a subsequent decision rendered in Award No. 28739 is misplaced. The former decision involved a dispute, based on a different agreement. In that dispute Signalmen performed work on a hard wire voice communication system known as Trainphone while contractors performed work on a wireless voice communication system, specifically portable radios. The Award held that radio equipment used for voice communication was never reserved to Signalmen, therefore the carrier was free to assign it as it saw fit. The latter dispute again involved a wireless voice communication system utilizing microwave radio. In each case the decision was limited to that radio equipment used for voice communication. In each case the specific contract language involved was "wayside or office equipment of communicating systems." The Awards in PLB 2543 and 3-28739 held that voice communication via radio equipment was not reserved to Signalmen by virtue of the above quoted language because radio equipment used for voice communication represented a form of work not heretofore installed and maintained exclusively by Signalmen.

In contrast, the reasoning that the same portion of the Scope Rule reserved communication work for Signalmen was confirmed in Third Division Award No. 28487, McAllister, (also involving the same Claimants and issue as Award No. 28739) held:

> "Most of the channels of the microwave system are used for communication of information unrelated to the signal system. The Organization argues this work is reserved to claimants under a provision of the Scope Rule . . .
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> * * *
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> The Carrier responds to the Organization's argument by referring to the Award of Public Law Board 2543 . . .
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> * * *
>
> The Board notes that it decided a similar issue in Third Division Award 26825 in a case involving the Carrier using members of the IBEW to set poles which were used to mount radio antennae."

The claim was sustained, however, on procedural grounds.

The referenced Award No. 26825, interpreted the preservation clause, which reads:

> ". . . it is also understood that work not included within the Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen <u>will not be removed from such employees at the location</u> at which such work was performed by past practice or agreement on the effective date of this agreement." (emphasis added)

The reasoning in 26825 is that existing work performed by Signalmen (especially subsequent to the PLB 2543 decision) was reserved to Signalman "<u>in the district involved in the claim.</u>" This precedent clearly indicates that system wide exclusivity is not a factor in the determination of work preserved by the preservation clause.

More recently, in Award No. 28625, Referee Eischen, again confirmed that the preservation clause, referred to therein as a "freeze-frame" clause preserved the status quo.

The distinction between the awards supporting the majority and the instant dispute is clear:

1) The work involved in this dispute did not involve voice communication, rather it involved the relay of video signals from a remote camera to a video monitor, a system heretofore installed and maintained exclusively by Signalmen.

2) The work involved on the complete video system was unrefuted as exclusively Signalmen's work at this location, prior to the change to the radio based communication circuit which was integral to the video system.

In any event, precedent concerning the issue of a change in the method of transmission from "wire signals to wireless radio technology" is well established. The overwhelming majority of decisions rendered by this Board and others have consistently held that a change in the manner or method that is used to perform a specific function has no effect on the craft of employees to whom the work is reserved and that agreements encompass changes in methodology.

In Third Division Award No. 864, it was held:

> "The Agreement is clearly applicable to certain character of work and not merely to the method of performing it. To hold otherwise would operate to destroy collective bargaining agreements. Improved methods have no more effect upon such agreements than such agreements have upon the right of the carriers to install such methods." (emphasis added)

The question presented in the case at bar is controlled by the function of the work performed not the form used.

In Public Law Board 3622, No. 4, Referee Peterson held:

> "The use of radio communication as an integral part of the system represents technological advancement rather than introduction of a new communicating system or replacement of the system heretofore exclusively installed and maintained by Signalmen and Signal Maintainers." (emphasis added)

The reasoning in these awards was reaffirmed, since the time the instant dispute was presented to the Board.

This identical issue, with the Electrician's as Third Party, also arguing that it had exclusive right to radio work notwithstanding the function performed by the radio; recently was addressed in Third Division Award No. 28652, with Referee Sickles. The Electricians in that case, as here, relied upon Second Division Award No. 7774. In Award 28652, Referee Sickles, held that PLB 3622, Award 4 "considered and dismissed the IBEW's Third Party contention similar to the one presented here" and also held:

> "We are persuaded by the conclusions set forth in Award 4 of PLB 3622 and its subsequent Interpretations and we will sustain the claim."

The decision rendered in 28652 was again reaffirmed in PLB 4716, Award No. 28, with Referee Wesman as follows:

> "After careful review of the facts and the preceding awards cited by both parties the Board is persuaded that the facts of the instant case and the issues raised are full on point with Award No. 3-28652 (Referee J.A. Sickles)."

In summary, the decision rendered in the instant dispute - based not upon fact, long standing contract interpretation, or precedent on point with the issue; but instead based upon decided cases involving distinctly different issues, and interpreting completely different contract language from the case in point; is palpably erroneous and without precedential value.

To paraphrase the long standing tenet; the purpose of the work as a whole rather than the manner, method or detail of its component parts are persuasive in determining to which agreement or craft the work accrues. The purpose for this work did not change and the Agreement provided that such work "[would] not be removed from the employees [Signalmen] at the location."

Therefore, I dissent.

Respectfully submitted,

C.A. McGraw, Labor Member

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S DISSENT

AWARD 29070, DOCKET SG-28690
(Referee Roukis)

Foreseeing an ever increasing utilization of radios and radio technology to enhance communications as opposed to hard wire, the Signalmen and the Carrier established PLB No. 2543 to resolve the issue of whether the communication employes represented by the IBEW, or the Signalmen represented by the BRS would have the exclusive right to install and maintain radio equipment.

In August of 1980, the neutral in PLB No. 2543 held that the Signalmen's Agreement did not embrace the "...installation and maintenance of Consolidated Rail Corporation owned radio equipment..." No dissent was filed by the minority member of that Board.

Subsequent thereto, Carrier has attempted to abide by that Award and as radio enhanced communication became more sophisticated and prevalent, the communication workers represented by the IBEW have had more work consistent with the rules and practices as enhanced by PLB Award No. 2543.

Third Division Award 25545 adopted in July of 1985, again without dissent being filed, upheld Carrier's right to assign radio technology to communication workers, citing not only rules and agreements, but PLB Award No. 2543 as precedent.

Third Division Award 28739 was judged solely on its merits by a neutral who correctly analyzed the rules and Award PLB No.

2543 and upheld Carrier's decision to assign to the communication workers the installation and maintenance work of radio enhanced communications.

It is to be noted in Award 28739 that the neutral also took into consideration the "grandfather" or "savings" clause in the Scope Rule and rejected its application by stating:

> "...It is also not the type of work intended to be '...performed by employees represented by the Brotherhood of Railroad Signalmen.' As such, the savings clause to the scope rule does not support the Organization's claim."

It is further significant to note that Third Division Award 28739 was adopted in March of 1991. No dissent has been filed.

The neutral in Third Division Award 29070, properly and correctly analyzed the parties' positions, the applicable rules, Board precedent and found that Carrier's actions were proper and consistent with existing rules, agreements and practices.

Robert L Hicks
R. L. Hicks

M W Fingerhut
M. W. Fingerhut

Michael C. Lesnik
M. C. Lesnik

P V Varga
P. V. Varga

James E. Yost
E. Yost