

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31970
Docket No. SG-32228
97-3-95-3-4**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

CASE NO. 1

Claim on behalf of C. L. McNeff, et al., for payment of 12 hours per day at the time and one-half rate for each Claimant for a number of days to be determined in a joint check of Carrier's records, account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 2, when it used employees not covered by the Agreement and an outside contractor to perform the covered work of constructing and installing signal system equipment, including antennas, foundations, cables, conduit, batteries and signal code devices, at various locations, beginning October 12, 1993, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 94-14-6. General Chairman's File No. 01-1190. BRS File Case No. 9511-ATSF.

CASE NO. 2

Claim on behalf of D. L. Levell, et al., for payment of eight hours per day at the time and one-half rate for each Claimant for a number of days to be determined in a joint check of Carrier's records, account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 2, when it used employees not covered by the Agreement and an outside contractor to perform the covered work of constructing and installing signal system equipment, including antennas, foundations,

cables, conduit, batteries and signal code devices, at various locations, beginning September 14, 1993, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 94-14-2. General Chairman's File No. 01-1189. BRS File Case No. 9511-ATSF.

CASE NO. 3

Claim on behalf of R. L. Testerman, et al., for payment of 10 hours per day at the time and one-half rate for each Claimant for a number of days to be determined in a joint check of Carrier's records, account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 2, when it used employees not covered by the Agreement and an outside contractor to perform the covered work of constructing and installing signal system equipment, including antennas, foundations, cables, conduit, batteries and signal code devices, at various locations, beginning November 11, 1993, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 94-14-8. General Chairman's File No. 01-1196. BRS File Case No. 9511-ATSF.

CASE NO. 4

Claim on behalf of M. G. Pipkin, et al., for payment of 10 hours per day at the time and one-half rate for each Claimant for a number of days to be determined in a joint check of Carrier's records, account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 2, when it used employees not covered by the Agreement and an outside contractor to perform the covered work of constructing and installing signal system equipment, including antennas, foundations, cables, conduit, batteries and signal code devices, at various locations, beginning January 29, 1994, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 94-14-14. General Chairman's File No. 01-1212. BRS File Case No. 9511-ATSF."

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 employee 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 this dispute and chose to file a Submission with the Board.

The Organization protests the Carrier's determination that the installation of the Advanced Train Control System (ATCS) at numerous locations on the Carrier's regions is communications work falling under the IBEW Agreement and not signal work falling under the Organization's Scope Rule. In light of the magnitude of the work, the Carrier also used contractors to perform the installations.

According to the Carrier, despite its name, ATCS is not solely signal equipment but is a radio device and a data relay system which can be used to relay timekeeping, work orders for trains, locomotive health reporting, etc. The Carrier acknowledges that the equipment does relay a signal code, but nevertheless maintains that the equipment is a radio device and, hence, communications equipment. Further, according to the Carrier, the data radio which is being installed at trackside control points is merely an extension of the Carrier's present communications network facilities which connect its network to the trackside control points. As the Carrier views the work, all that is happening is that a communications device is replacing another communications device and that the ATCS system does not affect the movement or control of trains but is simply a radio system which does not give signals or start and stop trains.

As described by the Carrier, an outside concern will provide and install ATCS data radio links between the Carrier's communications network facilities and trackside control points and will further place the ATCS radio equipment and run the power and interface cabling into the signal house. Signal personnel will route power and interface cables through the signal house, connect the power cable and diagnostic panel, and make necessary PROM changes to Harmon Logic Controllers. Signal forces will also install,

test, repair, and maintain those controllers and diagnostic panels which replace existing units. Further, during their regular visits, Signal personnel will determine that ATCS batteries are fully charged and make a visual inspection of the ATCS equipment. FCC required adjustments and calibration of the ATCS equipment will be handled by a communications representative.

The IBEW agrees with the Carrier's determination that the work is communications work.

The burden in this case is upon the Organization to demonstrate the elements of its claim. At best, the Organization's arguments are debatable. From the description of the work in the record, the Carrier has sufficiently shown that the installation work being performed is communications work falling under the IBEW Agreement and not signal work falling under the Organization's Agreement. The Organization's burden to show that the work falls under its Scope Rule and not the IBEW's Agreement has not been met. The claim shall be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 6th day of May 1997.