

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32128  
Docket No. SG-32577  
97-3-95-3-503**

**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: (  
(Grand Trunk Western Railroad Incorporated**

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad (GTW):**

**Claim on behalf of K. A. Taylor, K. Mapes, G. R. Tye, D. J. Bezeau Jr., G. S. Mapes, W. A. Moberg, J. K. Ragland, R. F. Westrate, T. O. Coyan, E. D. Miller, and L. J. Kollar for payment of 65.45 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than covered employees to install equipment for a car identification system and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 8390-1-86. General Chairman's File No. 94-60-GTW. BRS File Case No. 9671-GTW."**

**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.

The Scope Rule covers represented employees of the "Grand Trunk Western Railroad Company (GTW), the former Detroit, Toledo and Ironton Railroad Company (DT&I), and the former Detroit and Toledo Shore Line Railroad Company (D&TSL) ... engaged in the construction, installation, maintenance, repair, testing and inspecting, ... [o]n the former DT&I: telephone and other communications systems and devices ...." The dispute in this case involves the Carrier's use of a contractor to install and test (at the vendor's expense) a wayside Automatic Equipment Identification (AEI) system—specifically, concrete work, equipment housings, cables and reading equipment at various locations on the former DT&I—which action the Organization asserts violated the Scope Rule. No claim has been made for maintenance work on the AEI equipment as that work was subsequently assigned to the covered employees.

The distinction between AEI and the former Automatic Car Identification system (ACI) was discussed in Third Division Award 31053:

"... [AEI] identifies rolling stock via wayside devices so the Carrier knows the location of equipment moving across its property. Each piece of moving rail equipment has an identification tag which is a radio sensitive-reflective transponder. The transponder receives radio waves emitted from a trackside transmitter/receiver and bounces the waves back to the trackside equipment to be decoded with a microprocessor. The information is then conveyed by telephone line and modem to a central facility to keep track of the location of all rail equipment on the Carrier's system.

... [T]he obsolete ... ACI system involved the use of a wayside optical scanner which, using a high intensity light source, read a light reflective bar code on equipment as the equipment passed by the scanner. The information was processed in housed wayside circuits and the information was then sent via modem and telephone line to a central location. ...."

See also, Public Law Board No. 4716, Award 62 ("The new, AEI scanners utilize radio technology rather than bar-code technology to read data from the rolling stock.").

The AEI system is clearly "communications systems and devices" under the Scope Rule. The Carrier's use of a contractor to perform "construction, installation ... testing and inspecting" of the AEI system was the performance of scope covered work and therefore violated the Scope Rule.

The Carrier's main argument is that AEI work "was new work not covered under the scope of the agreement." That argument is not persuasive. See Award 31053:

"While the Carrier attempts to characterize AEI as a separate system from ACI, the two systems perform identical functions. Both systems also used a wayside track device to identify passing equipment. When construing the Scope Rule, the purpose of the equipment controls over the methodology used to accomplish the purpose. (Third Division Award 8217.) In addition, a change in the technology or methodology for performing a particular function does not mean that the work, itself, changes (Fourth Division Award 4635.) The mere fact that radio waves are an integral part of AEI while light waves were the instrumental part of ACI, does not necessarily remove work from the scope of the Agreement especially where the new system replaced the old, obsolete system. The technological advancement from optical scanners to radio waves does not remove the work from the scope of the Agreement because a technological advancement does not create new work, but merely replaces old signal work. Public Law Board No. 3622, Award 4. The overall purpose of the system is to identify moving rail equipment...."

See also, Public Law Board No. 4716, Award 62, *supra*, quoting Third Division Award 8217 ("However, the change in technology does not per se remove the work performed by that technology from the Scope Rule ... '[t]he fact that this particular type of equipment ... [is] of a new design does not give the Carrier the right to assign the work of installing, testing, and maintaining it to employees not covered by the Signalmen's Agreement.'").

To the extent Third Division Award 19694 conflicts with the above Awards, we do not find Award 19694 persuasive to change the result, particularly given the wording of the Scope Rule here covering "other communications systems and devices." Again, AEI is a "communications system." Indeed, although in that case the Organization took

the position that ACI "is a signal system" with the carrier therein arguing that ACI is "a communications system", the Board concluded that the predecessor ACI system "is a communication system." The more advanced AEI is also a communications system.

Third Division Award 18544 (on the former DT&I) relied upon by the Carrier is also not persuasive. There, a note to the Scope Rule stated that the "... employees will continue to perform such telegraph, telephone and electronic work as has been customary." A claim by the Organization concerning maintenance of ACI equipment was denied because, "[t]he automatic car identification equipment was not in existence at the time the Agreement was entered into ... [and t]herefore, work on such equipment could not be 'electronic work as has been customary' as referred to in the 'NOTE.'" That specific language is not present in the current form of the Agreement.

The Joint Letter of Understanding dated December 21, 1967 does not dictate a different result as urged by the Carrier. That letter signed by the Carrier, the Organization and the IBEW, states "that signalmen will continue to perform such other work as in the past outside of Hall and Vreeland Roads." The language of the Current Agreement incorporates that letter. The Carrier focuses upon "in the past" and argues under authority of Award 18544 that because AEI is "new work", the Scope Rule could not have covered such work "in the past." To prevail on such an argument, the Carrier must make more of a showing than it has.

There is no question that the Scope Rule covers "construction, installation ... testing and inspecting ... other communications systems and devices ..." The record also shows that "in the past" covered employees installed components of the former ACI system. Further, in accord with prior Awards, we have found the AEI system to be a "communications system." In addition, the Awards cited above (particularly, Award 31053) stand for the proposition that the purpose of the equipment, not the methodology prevails and that changes in technology do not change that purpose so as to remove the work from scope coverage. We believe those Awards to be better reasoned than Award 18544.

Given those better reasoned Awards and the fact that there is no showing by the Carrier that "in the past" as stated in the December 21, 1967 letter was intended by the parties to exclude the same type of installation and testing work which was previously performed by covered employees, albeit work which now involves a better functioning technology, we find the Organization's position has not been rebutted. The bottom line

is that, by agreement, covered employees are to install and test communications systems—and that is what they were entitled to do in this case. Therefore, as found above, when the Carrier utilized a contractor to perform scope covered work, it violated the Scope Rule.

The purpose of a remedy is to make the affected employees whole. Here, the covered affected employees lost work opportunities. Make whole relief requires that they be compensated for those lost opportunities. The claim seeks such compensation at the straight time rate, which shall be granted.

However, there appears to be questions concerning the scope of the relief. The Carrier asserts that Claimant Mapes was a Foreman in charge of the AEI project and that compensation to him under the claim would amount to double pay. The Carrier further points out that on September 26, 1995, the Organization amended the claim to remove specific locations on the former D&TSL, but at the same time, says the Carrier, some of the Claimants are former D&TSL employees and therefore not entitled to relief. Finally, there is further dispute concerning the specific amount of hours claimed.

In light of the above, the matter is remanded to the parties to determine which Claimants are entitled to relief (without affording employees who worked on the project with double payment) and to further determine the amount of that relief. Relief shall be limited to work performed at the appropriate locations for the appropriate employees as progressed on the property and for the number of hours it took the contractor to perform the work at the specific locations, with compensation to be paid at the straight time rate.

### **AWARD**

**Claim sustained in accordance with the Findings.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

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

**Dated at Chicago, Illinois, this 13th day of August 1997.**