

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32210
Docket No. SG-31799
97-3-94-3-81**

The Third Division consisted of the regular members and in addition Referee James E. Mason 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):

A. Claim on behalf of S.E. Ward for payment for all time worked by employees not covered by the Signalmen's Agreement maintaining and repairing Avtec signal equipment used to transmit and receive CTC signal system codes between Perry and Edmond, Oklahoma, beginning October 10, 1992, and continuing until Carrier ends the practice of using non-covered employees to perform this work.

B. Claim on behalf of S.S. Boehme for payment for all time worked by employees not covered by the Signalmen's Agreement to maintain and repair Avtec signal equipment used to transmit and receive CTC signal system codes between Edmond and Purcell, Oklahoma, beginning October 10, 1992, and continuing until Carrier ends the practice of using non-covered employees to perform this work.

C. Claim on behalf of R.L. Testerman, S.J. Shinn, R.L. Webb, R.J. Dexter, E.L. Fouch, R.D. Webb and G.D. Gray for payment of 20 hours each at the straight time rate, account Carrier utilized other than employees covered by the Signalmen's Agreement to install and maintain Avtec signal equipment used to transmit and receive CTC signal system codes between Edmond and Purcell, Oklahoma, from September 21 to October 2, 1992.

D. Claim on behalf of T.R. Miller, D.J. Dunigan, J.E. Jones, K.E. Stull, D.L. Burch, L.E. Looman and H.D. Bachus for payment of 20 hours each at the straight time rate, account Carrier utilized other than employees covered by the Signalmen's Agreement to install and maintain Avtec signal equipment used to transmit and receive CTC signal system codes between Edmond and Purcell, Oklahoma, from September 21 to October 2, 1992.

E. Claim that Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than employees covered by the Signalmen's Agreement to perform the covered work of installing, maintaining and repairing Avtec signal equipment, as specified herein, and deprived the Claimants of the opportunity to perform this covered work. Carrier's File Nos. 93-14-42, 93-14-43, 93-14-44, 93-14-45. General Chairman's File Nos. 1-1110, 1-1111, 1-1112, 1-1113. BRS File Case No. 9307-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.

The dispute in this case concerns the performance of work which is claimed by both the Brotherhood of Railroad Signalmen (BRS) and the International Brotherhood of Electrical Workers (IBEW). For that reason, a third-party notice was given by the Board to the IBEW. The IBEW presented its position in an ex-parte Submission to the Board and appeared at the Hearing of this case before the Board.

Inasmuch as both Organizations claim Scope/Classification rights to the disputed work, the respective Scope/Classification Rules are reproduced herein in pertinent part.

"RULE 1 - SCOPE (BRS)"

(a) This Agreement governs the rates of pay, hours of service and working conditions of employees in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, traffic control systems (TCS), automatic highway crossing warning devices, including all their appurtenances and appliances; also electrically controlled car retarder devices, train order signals, electric signal and switch lamps, switch heaters connected to or through signal systems, hot box, high water, dragging equipment and slide detectors connected to or through signal systems; static protection installations, wayside automatic train stop (ATS), or perform any other work generally recognized as signal work performed in the field or signal shops.

(b) In addition to work which employees of the Organization signatory hereto currently perform, said employees will continue to install, maintain, and will commence repairing circuit boards of apparatus assigned to the Signal Department, as follows:

Commencing no later than January 1, 1984.

HARMON: Model 531 Carrier Transmitters and Receivers
 Model 1200/1201 Line Overlay
 Model 1110 BT/R-2 AFTAC
 WC-100 and WC-300 Presence Detectors
 Model 1101 BT/R AFTAC or equipment performing the same function, manufactured by this vendor.

WABCO: AFO and Carrier units or equipment performing the same function, manufactured by this vendor.

Commencing no later than January 1, 1985:

HARMON: Model 1140-B Motion Detector and Motion Detector

**WABCO: Hi-frequency Track Circuit Units
Radar Units Wheel Detector WD-30 and
400 Hz**

**SERVO: Models 7621, 7621-M, 77-77-D and 7707,
except Recorders and Talker**

**GRS: Wheel Thermal Scanner Systems, except
Recorder and Scanner with defective cell
and Series Overlay**

Commencing no later than January 1, 1986:

**SERVO: Models 8808 and 8909, except Recorders
and Talker**

SAFETTRAN: SOTC and PSO

Circuit Boards that are in warranty, or those involving modifications to be accomplished at manufacturer's expense, will be returned to the vendor for repair or modified in the field by the vendor, as appropriate.

Nothing in this Agreement will prevent Signal Maintainers or Signal Inspectors from changing components, i.e., tubes, transistors, resistors, transformer, etc., as instructed to repair electronic apparatus.

Retarder Yard Specialists will continue to repair electronic apparatus under their jurisdiction, as instructed.

It is agreed that further consideration for repair of additional circuit boards will not be open for discussion until January 1, 1987.

Nothing contained herein is intended to infringe on the rights or privileges of other crafts or classes of employees.

(from MEMORANDUM OF AGREEMENT dated 10-28-82,
effective 1-1-83)

(c) When signal circuits are handled on communications systems of other departments, the employees covered by this Agreement shall install and maintain the signal circuits leading to and from common terminals where signal circuits are connected with other circuits.

(d) The classifications as enumerated in Rule 2 include all of the employees of the Signal Department performing the work referred to under the heading of 'Scope.'

NOTE: Employees assigned to positions described in the Classification Rule of the Agreement will be trained and assigned, subject to qualification rules in the Agreement, to install, maintain and/or repair the systems and devices, including their appurtenances and appliances, set forth in the Scope Rule, which are introduced in the future.

(NOTE from IMPLEMENTING
AGREEMENT dated 9-30-83, effective
12-31-83)"

"RULE 2 - CLASSIFICATION (IBEW)

a. **Special Electronic Technician:** A qualified employee who holds at least a Federal Communications Commission Radio Telephone Operator's Second-Class License or the class of license currently required by the Federal Communications Commission for the type of work covered under this Agreement, assigned for the purpose of assembling and repairing complex communications equipment including modules and/or units of equipment such as radio, radar, microwave and multiplex equipment and other electronic equipment which is now in use or may later be adopted

which may or may not require a federal license, and such other work as may be assigned to fill out his tour of duty. Assignment of positions in this classification shall be only in a System Communication Shop(s), and Rule 5 of this Agreement shall be applicable.

b. Licensed Electronic Technician: A qualified employee who holds at least a Federal Communications Commission Radio Telephone Operator's Second-Class license or the class of license currently required by the Federal Communications Commission for the type of work covered by this Agreement and who is assigned to install (except on locomotives and railroad cars) and maintain mobile equipment such as inductive carrier, entertainment radio, passenger entertainment equipment, and their related appendages and all communication radio, radar and other electronic equipment which is now in use or may later be adopted which requires a federal license. He may also perform the type of work covered by this Agreement which does not require a license, and may have installation and maintenance work assigned to him on new communications devices not requiring a license."

This dispute concerns itself with Carrier's actions of relocating two existing Avtec data communications devices from Arkansas City, Kansas, and installing one of the devices at Perry, Oklahoma, and the other device at Edmond, Oklahoma. From the record as presented to the Board, it is clear and undisputed that the Avtec equipment (three separate units) were originally installed at Arkansas City by employees represented by IBEW. There was no objection voiced by the BRS when this installation occurred. After two of the three Avtec devices were relocated to Perry and Edmond respectively by IBEW employees, the claims as outlined in the STATEMENT OF CLAIM, *supra*, were presented by BRS.

It is the position of the BRS Organization that the installation, maintenance and repair of the Avtec devices accrues to Signalmen under the provisions of its Scope Rule inasmuch as the devices as situated in this case are a part of the operating signal system. It argues that because the devices as relocated to Perry and Edmond modified and updated the existing Harmon 531 carrier systems at those locations and inasmuch as the Harmon 531 carrier system is specifically identified in the BRS Scope Rule, any work which involves or affects these Harmon 531 systems accrues exclusively to Signalmen. It insists that the Avtec equipment constitutes an integral part of the signal system for the reason that it functions only to affect the control and movement of trains and that

the same signal data is received and transmitted through the Avtec modems as was transmitted through the Harmon 531 equipment. The BRS points to the language of its Scope Rule which, in the NOTE following Paragraph (d) thereof, specifically requires that Signalmen must be trained and assigned to install, maintain and repair devices, etc., which may be introduced to modify or replace equipment specifically mentioned in the Scope Rule such as the Harmon 531 carrier system.

The BRS insists that Signalmen are actually used to "maintain" the Avtec equipment in question. It alleges that Signalmen are required, on occasion, to reset the Avtec modem and to check the back-up batteries of the units.

The BRS additionally contends that regardless of any past practice by the IBEW, the BRS Scope Rule is specific and controlling, citing Second Division Awards 7610 and 6581 in support thereof. The BRS argues that the purpose of the Avtec modems is to receive and transmit signal data. Therefore, it says that the purpose of the work determines the craft which must be used to install and maintain the equipment. It cites Award 4 of Public Law Board No. 3622 and Third Division Award 19525 in support of this consideration.

Finally, the BRS contends that the remedy sought is justified to permit recovery by the Signalmen for the loss of work opportunity which they suffered. It cites Third Division Award 27485 in support of this contention.

In addition to all of the other citations, the BRS cites with favor Award 79 of Public Law Board No. 4716 and Third Division Award 31053 in support of its position that the Avtec equipment should have been installed by Signalmen.

The Carrier for its part asserts that Avtec modems are data communication devices which have been historically and solely installed and maintained by IBEW employees. Carrier points to the undisputed fact that Avtec devices have been in use on this Carrier since 1985 without any objection from the BRS except for this single instance. Carrier further asserts that there are at present some 190 of these Avtec modems in use throughout Carrier's property, all of which have been installed by IBEW employees. Carrier contends, without contradiction by the BRS, that when the first installation of this type was made in 1985, a Harmon 531 unit at that location was also eliminated and no claim or complaint was made by the BRS. In fact, Carrier says, when the Avtec devices involved in this case were initially installed at Arkansas City by IBEW employees, again no objection was raised by the BRS. Carrier states, again without

contradiction, that after Avtec modems are installed by IBEW employees Signalmen are used to make the interface connection with the Avtec modems and the various signal lines.

As to the Harmon 531 equipment here in question, Carrier argues that such equipment merely repeated or overlaid the signal code from the Avtec modem and that, when the two Avtec modems here involved were relocated from Arkansas City to Perry and Edmond respectively, there was no further need for the repeated or overlaid signal code by the Harmon 531 equipment and it was retired. Thereafter, Carrier asserts, the Avtec modems converted the digital signal provided by the signal coding equipment in either of two standard data communications interface formats to an analog voice frequency signal for connection to communication transmission facilities such as telephone company circuits, microwave channels or cellular. This action, Carrier contends, did not violate any of the provisions of the BRS Scope Rule but rather complied with the requirements of Rule 2 - Classification of the IBEW Agreement.

As to the BRS contention relative to Signalmen maintaining the Avtec modems, Carrier insists that because the Avtec equipment is generally located in the same area as the signal control cases and inasmuch as Signalmen are generally the first called when signal situations occur, Signalmen do, on occasion, push a "reset" button on the Avtec equipment to reactivate the systems. If that does not work, then an IBEW employee is called to repair or replace the modems. As to the contention of back-up battery maintenance at the signal control locations, Carrier states that such work has been and continues to be that of Signalmen. Carrier further argues that the many years of activity involving these Avtec modems without claim or complaint by the BRS is tacit acknowledgment that the work in question is not reserved exclusively to BRS.

The interested third party - the IBEW - contends that the installation and maintenance of modems such as the Avtec devices here involved generate and use radio frequencies the work on which is unambiguously included in the IBEW Classification Rule. It further insists that the BRS Scope Rule specifically provides that it will not infringe on the rights and privileges of other crafts. It points out that Signalmen did, in fact, perform the work of connecting the interface between the communication modem and the signal line. The IBEW additionally argues that since the advent of the Avtec data communication devices, the BRS has voiced no objection relative to the IBEW work and therefore, it says, BRS acquiesced in the conclusion that the installation and maintenance of these devices accrue to the IBEW in accordance with the terms and conditions of the IBEW Classification Rule. The IBEW points with favor to Award 1

of Public Law Board No. 4263 in support of this position. Additionally, the IBEW cites Third Division Award 29070 in support of the principle that the installation of microwave equipment which changes transmission from wire to wireless accrues to the IBEW.

This Board does not write Agreement Rules for the parties. The primary purpose of the Board is to interpret the Agreement Rules as they exist between the parties. Where, as here, two separate and distinct groups of employees claim the same work with each relying on the language of its own separate Rules Agreement, the Board must be extremely careful in its deliberations and decisions. Carrier's primary responsibility is to insure that its necessary work is properly performed by qualified employees in accordance with the terms and conditions of the applicable Rules Agreement. There is absolutely no benefit to the Carrier when a conflict arises between two crafts over the performance of the same work.

The Board agrees with the general principle relative to the issue of practice versus unambiguous Rule language. However, the Board is equally aware of the well-established principle that the employees and their representative Organization have a responsibility to know and police their Rules Agreement. The Board has held on numerous occasions that the real meaning and intent of an Agreement Rule is best evidenced by the actions of the parties under the Rule. It has been often held that silence is evidence of the most persuasive character and failure to contest an action of one of the parties to an Agreement is rightfully considered as acquiescence especially if it would have been natural under the circumstances to object to the actions as taken. In this regard, and in light of the historical fact situation which exists in this case, the Board is impressed with the logic and language which is found in Award 1 of Public Law Board No. 4263 which involved the same parties as are present in this case. There it was held:

"This Board finds it difficult to comprehend the Signalmen's Organization not having been aware as early as 1981 that the Carrier was replacing rotating red beacons on hot box/dragging equipment detectors with radio equipment programmed to transmit a prerecorded warning message to a passing train crew, and that employees other than as covered by their Scope Rule were being used to install and maintain the radios. Certainly, if not initially aware of the work being performed by others, it must be presumed that at some point shortly thereafter, or before some 59 to 64 installations had been completed, that the Signalmen's Organization had become aware of the situation. It would thus appear that by having waited

some four to five years following the first installation of radios at the detector sites before claiming a contractual entitlement to such work, that the Signalmen's Organization could be held to have acquiesced to the assignment of such work to IBEW Communications Technicians as not being violative of the Signalmen's Scope Rule."

In this case, the installation of Avtec modems began in 1985 and continued with about 190 such devices being installed throughout Carrier's system. This particular claim, according to the unrefuted evidence in the record, is the single objection which has been voiced by the BRS. Therefore, it is the Board's conclusion that reliance upon the practice of the parties is a valid consideration and is primarily controlling in the disposition of this dispute.

The Board does not find that the language of the BRS Scope Rule is as unambiguous and exclusive as is argued by the BRS in this case. The reference in the Scope Rule to the Harmon Model 531 device identifies it as a transmitter and receiver. The record contains uncontroverted assertions by Carrier that the Harmon 531 merely repeated the signal code from the Avtec modems. With the placement of the Avtec modems at Perry and Edmond, there was no need to repeat or overlay or superimpose this information over the signal wires and the need for the Harmon 531 device simply ceased to exist.

On the other hand, the language of the IBEW Classification Rule refers to all communication radio, radar and other electronic equipment. From the evidence of record, it is clear that the Avtec modems meet the criteria as described in Classification Rule 2 of the IBEW. In Third Division Award 29070, this Board held:

"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."

The Board reviewed the language of Award 79 of Public Law Board No. 4716 and does not find it to be of assistance in this case. There the Board had a clearly defined Scope Rule which is considerably more specific and inclusive than that which is found here.

The Board also reviewed Third Division Award 31053 cited by the BRS in support of its position. While the Board finds nothing in that Award to disagree with, the fact situation there is not the same as we find here. There a specific Automatic Car Identification System was replaced with another Automatic Car Identification System. There is no such in-kind replacement here.

On the basis of the totality of evidence and actions of the parties as found in this case, the Board concludes that there has been no violation of the rights of the BRS represented employees and the claims as presented are 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 17th day of September 1997.