

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: (a) That the Carrier violated and continues to violate the current Signalmen's agreement by assigning work covered by said agreement to workers not covered thereunder.

(b) Claim for all wages paid workers, other than Signal Department employes, for all hours of service spent in performing signal work, to apply on difference in rates of pay for Signal Department employes entitled to promotion in performing the signal work being done by other workers on the territory under Signal & Electrical Superintendent T. N. Charles of the Southern Railway System. This claim dates from September 7, 1945, and continues until the necessary correction is made to discontinue the use of other workers in performing signal work covered by the current Signalmen's agreement.

POSITION OF EMPLOYES ON JURISDICTION: This will refer to Docket No. SG-3597, referred to in the Board's notice of January 7, 1948, which hearing is to be held for the purpose of determining the question of the Board's jurisdiction only, on the Brotherhood's ex parte submission covering an unadjusted dispute between the Brotherhood of Railroad Signalmen of America and the Southern Railway System.

As we understand the Board's letter of January 7, 1948, it will be the Brotherhood's intention to deal with the matter of jurisdiction of the Board only.

It will be the purpose of the Brotherhood to show that:

- I. The Carrier recognizes the work is signal work.
- II. The work is generally recognized as signal work.
- III. The work involved is covered by the current (1942) Signalmen's agreement.
- IV. The claim involves a violation of the Signalmen's agreement.
- V. The matter is not a subject of jurisdictional dispute between the Brotherhood of Railroad Signalmen of America and the International Brotherhood of Electrical Workers as alleged by the Carrier.
- VI. The Third Division, National Railroad Adjustment Board, has complete jurisdiction of the grievance filed.

attempt to settle the dispute. This offer and request is still outstanding, and the Carriers have officially notified the Board of their willingness to so meet and confer.

In summary, the Carriers respectfully submit that the Third Division, National Railroad Adjustment Board does not have jurisdiction and should therefore dismiss the case and thus leave the matter for handling between the parties with assistance as may be accorded by the National Mediation Board as provided by the Railway Labor Act for the settlement of this dispute for the following reasons:

- (1) The Adjustment Board does not have jurisdiction. This has been recognized by the Third Division in at least two instances, and in effect has been recognized by the Mediation Board even if the latter Board does not have jurisdiction.
- (2) The dispute involves a change in working conditions of many years standing, which gives the Mediation Board rather than the National Railroad Adjustment Board jurisdiction under Sec. 5, First (a) of the Railway Labor Act.
- (3) Under Sec. 3, First (i) of the Railway Labor Act of 1934, as amended, the jurisdiction of the National Railroad Adjustment Board is confined to "Disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions * * *." With its jurisdiction being so defined, it is obvious that the jurisdiction of the Adjustment Board does not extend to the settlement of jurisdictional disputes.
- (4) The Third Division, National Railroad Adjustment Board has rendered awards recognizing that it has no jurisdiction over jurisdictional disputes similar to that here involved. See Awards 616 and 641. To hold that it has jurisdiction in the instant case would mean that the Board would have to reverse its position and overturn its two previous decisions.
- (5) The only procedure provided for the settlement of jurisdictional disputes by the Railway Labor Act is that provided by recourse to mediation under the provisions of Section 5, First (b) or Section 2, Ninth of the Act.

For all of the reasons hereinbefore mentioned, Carriers respectfully submit that the Third Division, National Railroad Adjustment Board must dismiss this case for want of jurisdiction and requests that it so decide.

Exhibits not reproduced.

OPINION OF BOARD: The only question here before us is whether a jurisdictional dispute exists. If one does exist, the question is for the National Mediation Board. If one does not exist, the Third Division has jurisdiction to decide the matters in issue.

It is urged by the Carrier that the work in question is claimed by the Signalmen's Organization and the Electrical Workers' Organization by virtue of the collective agreements that each hold with the Carrier. We shall, of course, determine whether the Third Division of the National Railroad Adjustment Board has jurisdiction of the dispute before us. We cannot pass upon the jurisdiction, if any, of the National Mediation Board. It is the sole judge of its own jurisdiction in the first instance. We fully appreciate also that the Electrical Workers' Organization is not a party to this dispute and that any finding or holding made by us, is not binding upon that Organization.

The record shows that on the portion of the Southern Railway System covered by this claim, there is an alternating current signal system in service. It is composed in part of a transmission line consisting of poles, wires, relays, motors, transformers, lights, etc. The Signalmen's Organization contends that the installing, inspecting, repairing and maintaining of the signal system

is work belonging to them under their Agreement and that the Carrier violated the Agreement when it permitted employes of another department, Electrical Workers' Organization, to perform the work.

The Scope Rule of the Signalmen's Agreement with this Carrier, in so far as it is applicable to the present dispute, is as follows:

"This agreement covers the rules, rates of pay, hours of service and working conditions of employes hereinafter enumerated in Article II-Classification. Signal work shall include the construction, installation, maintenance and repair of signals, either in signal shops, signal storerooms or in the field, and shall also include necessary signal work on interlocking plants, automatic or interlocked highway crossing protection devices and their appurtenances, way-side train stop and wayside train control equipment, car retarder system, excluding track maintenance in connection therewith, centralized traffic control systems, as well as any other work generally recognized as signal work. * * *

It cannot be questioned, therefore, if the assertions of the Organization are sustained by sufficient evidence, that the work described is within the scope of the Signalmen's Agreement. The question then arises as to whether it is within the scope of the Electrical Workers' Agreement, not for the purpose of determining any rights under that Agreement, but for the purpose of determining whether there is an overlapping of the two Agreements in relation to the work here involved, sufficient to create a jurisdictional dispute and deprive this Division of the Adjustment Board of jurisdiction.

The Electrical Workers' Agreement provides:

"Electricians' work shall include electrical wiring, maintaining, repairing, rebuilding, inspecting, and installing of all generators, switchboards, meters, motors and controls, rheostats and controls, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries (work to be divided between electricians and helpers as may be agreed upon locally), axle lighting equipment, all inside telegraph and telephone equipment, electric clocks and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators; inside and outside wiring at shops, buildings, yards, and on structures and all conduit work in connection therewith (except outside wiring provided for in Rule 137), steam and electric locomotives, passenger train and motor cars, electric tractors and trucks; include cable splicers, high-tension power house and sub-station operators, high-tension linemen, and all other work properly recognized as electricians' work." Rule 136, Current Agreement.

The manner in which the scope rules of the Signalmen and Electricians are drafted appears of importance in this dispute. Scope rules generally fall within one of two classifications,—those which are very general in character and purport to include all work traditionally performed by the contracting craft, and those which specifically spell out the work included. Whether work falls within the general type of scope rule is dependent upon historical practice and custom and the general nature of the work. Of necessity, it is a matter of evidentiary proof. In the specific type of scope rule, one ordinarily examines the rule with a view of finding out if the work in question is described therein. The scope rules of the Signalmen and Electricians are of the latter type. They attempt to spell out the work belonging to each craft.

In this regard it will be noticed that the Scope Rule of the Signalmen's Agreement includes work which is directly a part of or appurtenant to the Carrier's signal system while that of the Electricians' Agreement particularly describes and specifies the types of electrical work included and nowhere mentions any work anywise connected with the Carrier's signal system. It does provide, after specifying particularly the work included, that "all other work properly recognized as electricians' work" is included. It is quite evident that it was never the intention of the drafters of the Scope Rule of the

- * Electricians' Agreement, as shown by the form of the rule itself, to include any work connected with the Carrier's signal system. If they had so intended, it would have been a simple matter to have said so. In view of the meticulous manner in which Electricians' work was set forth in the Scope Rule of their Agreement, the failure to specify any work traditionally performed by signalmen is very important in interpreting the meaning of the rule. In such cases, that which is not stated becomes most significant.

It is urged that the dispute is jurisdictional because the employes of two separate crafts are claiming the work. We submit that a mere claim to certain work is not sufficient to relieve this Board of jurisdiction. If such were true, the processes of the Board could be halted by a mere claim that a second craft believed the work to be theirs. To sustain a holding that the Board is without jurisdiction requires a showing that the Agreements of the claiming parties provide that the disputed work is included in each. If it can be established by proper interpretation of the Agreements that the work is within the scope of one agreement and not the other, no jurisdictional dispute exists. It is only when the Agreements of two crafts, with definiteness and certainty include the disputed work, that a want of jurisdiction on the part of this Board exists. It then becomes a matter of negotiation and mediation rather than interpretation in determining which of the two crafts shall have the right to the work.

We think, therefore, that an examination of the two agreements reveals that there is a fixed line of demarcation between the work of these two crafts, obscure as it may be. The work here in dispute offers a good example. It cannot be denied that a transmission line carrying electrical current which is constructed to provide power and lighting facilities for general railroad operations belongs to the electricians. It is just as certain that a transmission line constructed as a part of a signal system and used solely in connection therewith, provides work within the scope of the Signalmen's Agreement. If such a transmission line is used for both purposes, it becomes a matter of evidence as to which constitutes its primary use.

While the matter here involved is in one sense of the word a dispute between two crafts, it is a dispute which the Carrier can resolve by a proper interpretation of the collective Agreements which the Carrier has negotiated with each of the two crafts. It is not such a dispute between crafts which warrants intervention by the National Mediation Board.

We conclude that the Third Division has jurisdiction of the subject matter. The motion of the Carrier to dismiss the claim for want of jurisdiction is overruled without prejudice to the rights of the parties to file additional submissions on the merits of the case in accordance with the procedural rules of the Division.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That this Division of the Adjustment Board has jurisdiction of the dispute involved herein.

AWARD

Jurisdiction of Third Division sustained without prejudice to a further hearing on the merits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.