Award No. 4471
Docket No. SG-3597

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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.

PRELIMINARY STATEMENT OF EMPLOYES: Letter of July 29, 1948, with reference to Award No. 3999, Docket SG-3597, concerning a dispute between the Southern Railway Company, together with other associated lines, and its employes represented by the Brotherhood of Railroad Signalmen of America is quoted herewith:

"NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

220 S. State St.
Chicago 4, Ill.
July 29, 1948

Mr. C. D. Mackay
Asst. Vice President
Southern Railway System
Washington 13, D. C.

Mr. Jesse Clark, Grand President
Brotherhood Railroad Signalmen of America
Chicago 14, Illinois

Gentlemen:

The Third Division of the Adjustment Board with the assistance of Referee Edward F. Carter, having decided it has jurisdiction of the dispute entered by the Brotherhood of Railroad Signalmen of America involving docket identified as SG-3597, it is now requested that in conformity with Circular No. 1 of the Adjustment

(4) The Statement of Claim is only an unlimited protest and charges no specific violations of the Signalmen's agreement, and although money awards are demanded, no claimants are named as contemplated in the Signalmen's agreement.

(5) For all of the reasons given the claim should be dismissed, but, if not dismissed, it should in all things be denied and the Carriers respectfully request that the Board dismiss the claim, but, if not dismissed, that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Brotherhood of Railroad Signalmen of America contends that the Carrier, the Southern Railway System, has violated and continues to violate the scope of its Agreement with them by assigning work covered thereby to others outside thereof. It makes claim in behalf of all Signal Department employes on the Eastern Division, who would have been entitled to promotion in performing such signal work if it had been assigned to them, for the difference in rate of pay lost by reason thereof and asks that all wages paid such workers in performing that work be applied thereon, such claim to be continuous from September 7, 1945 until the violation is discontinued.

More specifically, the Brotherhood claims that all work performed in connection with the Carrier's signal system, except as specifically excepted by the provisions of their Agreement and which are not here involved, should be assigned to and performed by members under the scope of their Agreement, including the work of rebuilding, repairing and maintaining the transmission lines used in connection with its automatic signal system. This would include the replacement and maintenance of poles, crossarms, etc. on these transmission lines and the work of installing, repairing and maintaining of all signal apparatus, such as signal transformers, signal impedance coils, regulators, motors used for signal purposes etc., including the work of this character being done by an electrician and his helper in the shop located at Charlotte, North Carolina.

It should be noted that the claim does not seek to include work done in connection with electric lines and equipment used only for lighting in and around buildings, yards and stations, or whenever used where no signaling is involved.

Carrier again asks us to reconsider the question of jurisdiction, which was disposed of by Award 3999 of this Division in this same docket, and because of the questions involved herein to dismiss the claim because of a lack thereof.

Award 3999 of this Division is final and binding upon the parties to this dispute, as far as this Division is concerned, and we are bound thereby. See The Railway Labor Act, Section 3. First. (m).

In Award 3999 of this Division, with reference to the scope of the Signalmen's Agreement, it was held:

> "* * * the Scope Rule of the Signalmen's Agreement includes work which is directly a part of or appurtenant to the Carrier's signal system * * *"

Then the Award goes on to define what is appurtenant as follows:

> "* * * a transmission line constructed as part of signal system and used solely in connection therewith, provides work within the scope of the Signalmen's Agreement."

The Award also holds:

> "If such a transmission line is used for both purposes, it becomes a matter of evidence as to which constitutes its primary use."

Carrier insistently contends that the scope of the Signalmen's Agreement here applicable, being the Agreement effective April 1, 1942, is subject to the same provision as contained in Rule 137 of the International Brotherhood of Electrical Workers' agreement effective March 1, 1926. This provision, as contained in Rule 137 of the International Brotherhood of Electrical Workers agreement, is as follows:

> "Signal maintainers who, for fifty percent or more of their time, perform work as defined in Rules 136 and 137."

It recites, as a basis for this contention, the following: The provision of the Signalmen's National Agreement of February 1, 1920 with the Director General of Railroads, which is in effect the same as that contained in Rule 137 of the International Brotherhood of Electrical Workers' Agreement effective March 1, 1926; the continuation of that exception, by letter memorandum, in the Signalmen's Agreement effective June 29, 1921; the fact that although not contained in the Signalmen's Agreements effective July 15, 1924, July 1, 1929 and April 1, 1942, it was, by construction and application of those agreements on the property, in relation to the agreement of the I. B. of E. W., constructively carried foward therein and this, as evidenced by a memorandum made on February 11, 1942, by one of its officers while in conference negotiating the Agreement entered into effective April 1, 1942.

This provision, as contained in the National Agreement of February 1, 1920, is as follows:

> "This agreement shall apply to employes classified in Article I, performing the work generally recognized as signal work, except signal maintainers who, for 50 percent or more of their time, perform work as defined in rules 140 and 141 of the agreement dated September 20th, 1919, between the United States Railroad Administration and the employes represented by the Railroad Employes Department of the American Federation of Labor."

It should here be said that Rules 140 and 141 therein referred to are the same rules as 136 and 137 of the agreement with the International Brotherhood of Electrical Workers effective March 1, 1926.

By its holding in Award 3999 this Division has conclusively, and we think correctly, as a matter of fact disposed of this contention contrary to Carrier's views and determined that the scope of the Signalmen's Agreement is not subject thereto.

Although we shall not herein further consider the matter of jurisdiction, which was fully disposed of in Award 3999, however, we do think it desirable to correct the statement therein contained as to when a jurisdictional dispute exists. In Award 3999 we said:

> "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 the correct rule is stated in Award 616 of this Division as follows:

> "* * * the case presents a real jurisdictional dispute, in that it is rather over which organization should have the right to perform the work as now performed, than as to which does have such right."

That is, if the work is claimed by an organization for its members it must have an agreement with reference thereto before this Board has jurisdiction

to act thereon as this Board is solely an interpreting agency under the law creating it. If no organization, under its agreement, has the right thereto then it presents a question within the jurisdiction of the National Mediation Board. On the other hand, if the carrier has contracted the work to two or more organizations that fact does not divest this Board of jurisdiction to determine if the agreement before it gives to the members of that group the right to perform it. If this results in the same or separate divisions of the Board awarding the same work to separate organizations that does not result in loss of jurisdiction, but rather requires the carrier to renegotiate its agreements to remove the trouble.

What may be the rights of the International Brotherhood of Electrical Workers under the quoted part of rule 137 of their agreement effective March 1, 1926, we do not decide as that can only be determined by the Division of this Board having jurisdiction thereof.

The Carrier has an alternating current Signaling system on its lines which requires a separate transmission line. The factual situation shows that the Carrier would never have constructed these transmission lines on either its Eastern or Western lines but for the needs of its Signal Department, and they are used primarily for that purpose. It is true that the transmission lines make available to the Carrier additional facilities. It provides a means for lighting yards, stations and other railroad buildings, for supplying power to operate coal and water stations, air compressors and other machines, and for many other uses, and, as it relates solely to this type of use, we find, as stated in Award 3999, this work belongs to the electricians. However, we find that all transmission lines of the Carrier that were constructed to make the Carrier's Signal System automatic and connected therewith and used in the operation thereof were constructed for and are used primarily for signal purposes. The work of rebuilding, repairing and maintaining such transmission lines, together with all signal apparatus used in connection therewith, is signal work and within the scope of the Signalmen's Agreement. This includes the work being done by an electrician and his helpers on signal apparatus in the shop at Charlotte, N. C.

Carrier further contends that the claim is not in proper form under Rule 21(i) of the effective Agreement because it fails to name the claimants, fix the dates when the violations occurred and the amounts claimed.

Rule 21(i) is as follows:

> "In the handling of disputes which involve money payments under this Rule 21, such claims shall not extend behind a period of sixty (60) days prior to the date claim is filed. In making adjustments for over-payments, such adjustments shall not extend behind a period of sixty (60) days prior to the date upon which employes involved are notified that such adjustments are to be made."

This is a limitation rule whereby claims are limited to a period covering 60 days prior to date filed and has no relation to the contention to which Carrier seeks to apply it. The contention here made has often been answered by awards of this Division contrary thereto. As stated in Award 3687:

> "Carrier's contention that the claim is not sufficiently definite in that it fails to name the employes who were adversely affected by reason of any violation, the basis of their claim, and the amount claimed, is without merit based on previous awards of this Division. We have said: 'The fact that the claim is general and fails to name the claimants except as a class is not a bar to the disposition of the claim.' See Awards 3251 and 3423."

As to the individual employes of the Signal Department, if any, who have been adversely affected by the acts of the Carrier in its violation of their Agreement on its Eastern lines, when it permitted others not under the Signalmen's Agreement to do signal work, and the extent of their rights because thereof we do not here determine as it has neither been presented nor is it sufficiently brought out in the records. What we do determine is

that there has been a violation by the Carrier of the Scope Rule of the Signalmen's effective Agreement on its Eastern lines and that any employes covered by the Signalmen's Agreement, who have been adversely affected by reason thereof, have a right to recover whatever they may be entitled to under the rules of their effective Agreement, up to the extent of the violation. This means the extent of the work under the Agreement which the Carrier assigned to and had performed by others not thereunder.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, 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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim (a) sustained. Claim (b) sustained as to the rights of employes, who were adversely affected by reason of the violation, to recover to the extent as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1949.

DISSENT TO AWARD 4471, DOCKET SG-3597

The award in this case, in our opinion, goes beyond the jurisdiction of this Division as provided by the Railway Labor Act. It seems clear that this Division cannot by a previous award override the limitations on its statutory powers, as it has attempted to do by its interpretation of the effect of the decision of this Division in Award 3999. The record fully supports the conclusion that this case involves a jurisdictional dispute outside the scope of the Division's jurisdiction, and it should have been remanded to the parties for further negotiations, and for handling by the National Mediation Board in case of failure of settlement.

As a result of its failure to so remand the case, the Division has fallen into the further error of attempting by its award on the merits to write into the Signalmen's agreement an entirely new provision rather than limiting itself to an interpretation of the existing rules in the light of accepted customs and past practices. This Division has no such power, and the award to that extent is a complete nullity.

/s/ C. P. Dugan
/s/ C. C. Cook
/s/ R. H. Allison
/s/ R. F. Ray
/s/ A. H. Jones

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4471

Docket SG-3597

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen of America.

NAME OF CARRIER: Southern Railway Company.

Upon application of the representatives of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

With reference to the work performed by others, which we found was within the scope of the Signalmen's Agreement, the award states as follows: " * * * that all transmission lines of the Carrier that were constructed to make the Carrier's Signal System automatic and connected therewith and used in the operation thereof were constructed for and are used primarily for signal purposes. The work of rebuilding, repairing and maintaining such transmission lines, together with all signal apparatus used in connection therewith, is signal work and within the scope of the Signalmen's Agreement. This includes the work being done by an electrician and his helpers on signal apparatus in the shop at Charlotte, N. C."

For such violation of the scope of the Signalmen's Agreement we allowed (b) of the claim for an amount up to all wages paid workers, other than signal department employes, for all hours of service spent in performing signal work. This is set out in the award as follows:

" * * * that there has been a violation by the Carrier of the Scope Rule of the Signalmen's effective Agreement on its Eastern lines and that any employes covered by the Signalmen's Agreement, who have been adversely affected by reason thereof, have a right to recover whatever they may be entitled to under the rules of their effective Agreement, up to the extent of the violation. This means the extent of the work under the Agreement which the Carrier assigned to and had performed by others not thereunder."

Up to the limit of this amount it is to apply on the difference in rates of pay lost by Signal Department employes who would have been entitled to promotion in performing this signal work, which was done by others, if it had been properly assigned to them. The claim dates from September 7, 1945 and continues until the practice is properly discontinued.

However, the record upon which the award is based does not disclose the individual employes of the Signalmen who have been so adversely affected by the violation nor the extent thereof. Neither does it disclose the amount of Signalmen's work that had been done by others. Claim (b) was therefore sustained as to the rights of the employes to recover and the extent thereof with the intent that the additional facts necessary to determine the individual Signal Department employes who were adversely affected by the actions

of the Carrier and the amount each employe so adversely affected by the violation is entitled to recover should be developed on the property. When, from the records there available, including those of both the Brotherhood and Carrier, these necessary facts have been developed then the Carrier to pay each such employe the amount to which it is determined he is entitled, but the total of such amounts is not to exceed the total amount of the violations as they have been determined by the award.

Much is stated in Carrier's reply to the application of the Employes for an interpretation with reference to its attempts to renegotiate certain rules of its Agreement with the Brotherhood. This is apparently being done to remove certain difficulties presented by the application of this award on the property. However, we cannot in any way correct the difficulties of the Carrier, if they exist, by reason of this award. That must be done in accordance with the proper provisions of the Railway Labor Act. Until that has been done and a change made in the rule herein involved the rights of the Signalmen under their Agreement continue to exist and are enforceable in accordance with the findings of the award for such change would not be retroactive.

Carrier again raises the issue of jurisdiction and that the claim is vague and uncertain. These are fully and definitely settled by the award and no purpose would be served in restating here the language thereof. It needs neither interpretation nor clarification.

Referee Adolph E. Wenke, who sat with the Division as a member when Award No. 4471 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1950.