

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

J. S. Parker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atlantic Coast Line Railroad Company:

- (a) That the Carrier violated the Signalmen's Agreement when on or about April 10, 1947 it contracted out, removed, arranged, or otherwise assigned Scope work to persons who hold no seniority rights and are not covered by that agreement.
- (b) That Signal employes on the Atlantic Coast Line in the Signal Shop at Savannah, Georgia, shall be compensated at their regular rate of pay on the basis of time and one-half for an amount of time equal to that required by outside employes to perform signal work assigned to such employes in violation of the agreement; that each employe holding a position in the signal shop during the period signal work was improperly assigned to persons not covered by the signalmen's agreement shall receive compensation for his proportionate share of the total time worked by the forces in performing work on head relays farmed out to the Union Switch and Signal Company.

EMPLOYEES' STATEMENT OF FACTS: The Scope work involved in this claim constitutes a portion of repair, inspection, and testing of signal appurtenances consisting of H-2 searchlight relays which were shipped to an outside signal shop to be repaired.

The Signal Section, Association of American Railroads, in Chapter XIII of American Railway Signaling Principles and Practices, defines a searchlight signal as:

"Another type of color light signal used is known as the searchlight signal. It differs from the signals previously described in that all the aspects are given through one lens of clear glass. This is accomplished by a movable member of the unit placing a roundel of desired color in front of the lamp.

"The movable member of the unit mentioned is a standard relay of the three-position type, so arranged that when de-energized it will assume the neutral central position and give a red indication; the relay may be of either the alternating or direct current type.

"When operated by alternating current a standard polyphase vane relay mechanism is used, the roundels being directly mounted

operation of this type signal. Only skilled technicians, none of which we have, could accomplish this last intricate step which is done optically in a dark room equipped with extensive special apparatus. We have neither the dark room nor the special apparatus.

As is pointed out by Vice President Loomis, of the Union Switch & Signal Company, in his letter dated November 17, 1949, (Carrier's Exhibit "C"), these several processes were relatively simple when performed by the Signal Company in its factory as the many required components were available from stock and the necessary equipment and skilled operators and technicians were available while we had none of these.

It is and has been the aim of this Company by its signal modernization program to increase the safety of the traveling and shipping public and of our employees. One step in this program of advanced safety is the installation of signals upon which we have every right to rely. We certainly would not have had a secure feeling had we merely sent these signal relays to our Savannah shops for the limited cleaning and adjustment to which they would have been subjected there. However, by placing these signal relay units in the competent hands of skilled technicians, such as those employed by the Union Switch & Signal Company, we were assured of having returned to us a mechanism in which we could place utmost confidence.

The scope rule of the current Signalmen's Agreement provides that "this agreement covers rates of pay, hours of service and working conditions of all employees * * * engaged in the construction, repair, inspection, testing and maintenance, either in signal shops or in the field * * *." As was pointed out in Carrier's statement of facts, this work was not performed in either the shops or in the field, and, therefore, it does not come within the scope of this agreement. The only way the employees could successfully protest the farming out of this work would be through a classification of work rule guaranteeing them the right to perform all of this work. Obviously, there is no such rule. The scope rule merely subjects certain employees engaged in particular work at particular locations to the rules of the current agreement. Employees do not acquire title to all signal work; they only acquire right to perform such signal work as is performed on the property under the rules of the working agreement.

It cannot be successfully contended by the employees that, by reason of farming out this rehabilitation work to the Union Switch & Signal Company, Signal Department employees were subjected to loss of earnings as there have been no lay-offs or reduction in force in our Signal Department forces since 1942, all employees having worked full time. There were no furloughed, unassigned or extra employees, and, therefore, even had the expensive and intricate machinery been available there would not have been the required force competent to operate this equipment as all signal forces were busily engaged in their usual maintenance and repair work.

In the light of the description of the work which was performed on these signal relay units, such work could not, by the furthest stretch of the imagination, be termed construction, repair, inspection, testing or maintenance. Additionally, it is obviously work which could not under any circumstance have been performed in our signal shops or in the field. This Carrier feels that even should your Board not agree with Carrier's position that the doctrine of laches is applicable to this claim and that it was not progressed in accordance with provisions of Rule 50 as more fully set forth in the statements of facts, that the claim should be denied on the basis that there has been no violation of the scope rule of the current agreement.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The controversy here is over a claim of the Brotherhood of Railroad Signalmen of America that the Atlantic Coast Line Railroad Company, in violation of the current Agreement, assigned signal

work belonging to signalmen to outside parties not covered by its terms. The relief sought is that signal employes in the Carrier's shop at Savannah, Georgia, recover proportionate compensation at their regular rate of pay on the basis of time and one-half for an amount of time equal to that required by the outside force to perform the work so assigned by the Carrier.

Some of the essential facts are not in dispute but others are highly controverted. For that reason it has been necessary to carefully review a complicated and extended record in an effort to establish and then accurately portray the true factual situation upon which disposition of the claim depends. By the exercise of considerable effort that has been done and we are now able to and will relate, without regard to conflicting versions of the parties respecting them, the pertinent facts deemed by us to have been definitely and conclusively established by the record.

During the latter part of 1946, while conducting conventional tests of signal relays, as required by regulations of the Interstate Commerce Commission, the Carrier discovered that searchlight signal relays, Type H-2, originally manufactured by and purchased from the Union Switch & Signal Company and which had been in service for approximately fifteen years on its main line between Jacksonville and Orlando, Florida, were corroding and rusting far worse than identical signal relays in other territory and were in such shape their continued use in that condition would be dangerous to all persons concerned, including the traveling public. In fact one particular signal was found displaying a false indication in the stop position. Thereupon, in an effort to find some means of remedying the situation, then assumed and later established to be due to atmospheric conditions, one of such signal relays was replaced and sent to the Carrier's signal shop at Savannah, Georgia, to be cleaned, tested, and repaired by signal employes on duty at that point. Following repair of this unit by the Employes at Savannah it was sent to the Carrier's Chief Engineer Communication and Signaling, a Mr. Webb, for examination to determine whether its condition was such it could be placed back in operation with safety. After a thorough inspection of the repaired unit that individual decided the repairs at best would be only temporary and that to place it back in regular service in its then condition would be hazardous to the safety of employes, passengers, freight and the Carrier's property. Thereupon he sent the unit to the Union Switch and Signal Company for examination by its expert Engineers. Later Mr. Webb shipped another signal of the same type to the manufacturer with the request that it too be tested by its Engineers and that he be furnished with their report. Thereafter Mr. Webb received two reports from the Signal Company dealing with findings of its Engineers to the effect safety required a complete overhaul of the two units and all others of similar type and character in service on the Carrier's line between Yukon, Florida, and Orlando, Florida, and recommending that, due to the specialized type of repairs necessary, all such units be shipped to its factory at Swissvale, Pennsylvania, for this overhaul.

There can be no doubt that automatic signals of the kind here involved are used on high speed railroads as a safety measure to avoid collisions between trains running in the same direction, between opposing trains, to avoid accidents due to broken rails and open or cocked switches, and to expedite the movement of trains.

Following receipt of the two reports heretofore mentioned the Carrier, which my this time had in progress a signal modernization plan over its entire system, believing the work involved in the reconstruction and rehabilitation of signal units of the type here involved required the attention of expert Engineers and highly skilled employes, plus special shop tools and other equipment not possessed by its shop employes and its limited shop facilities, decided to ship all such signals in service between Yukon and Orlando to the manufacturer for reconstruction and modernization in accordance with the recommendation made by the Signal Company. Thereupon it had its signalmen remove twelve of such signals from the signal masts along its main line right-of-way between the points just mentioned and replaced them with new units of more modern design. Thereafter, on or about April 10, 1947,

it caused the twelve old units to be shipped to the Signal Company's factory at Swissvale, Pennsylvania, where they were overhauled in conformity with its recommendations. Later such units were returned to the carrier and again placed in service by its signal employees.

On all dates here in question there was in force and effect an Agreement between the parties. Its scope rule, which we may add the employees point out contains no provision excepting work of the type here involved, reads:

"This agreement covers rates of pay, hours of service and working conditions of all employees, specified in Rules 1, 2, 3, 4, 5, 6, and 7, engaged in the construction, repair, inspection, testing and maintenance, either in signal shops or in the field, of all signaling, interlocking, centralized traffic control, wayside train control or stopping device systems, highway crossing protection devices, spring switch mechanism when protected by signal, train order signals, together with their appurtenances, as well as any other work generally recognized as signal work."

It should, perhaps, be stated at this point that on April 1, 1946, the date in which the current Agreement was executed, and on the date of the events giving rise to this controversy, the Carrier maintained a signal shop at Savannah, Georgia, where signal work coming within the scope of such agreement was performed by its signal employees.

Within a short time after the twelve signal relays were shipped to the Signal Company for the purpose heretofore related the Brotherhood protested the Carrier's action on grounds the work, under the existing Agreement, belonged to employees covered by its terms. The record with respect to this matter is not clear. However, it can be stated that claim for the work was made by the Brotherhood and denied by the carrier. Thereafter no affirmative action was taken by the Brotherhood until November 7, 1949, when it advised the carrier of its intention to file an ex parte submission with this Board covering the dispute. Subsequently, the claim in form as heretofore set forth was filed and in due time progressed to the point where it is subject to final disposition by this Division of the Board.

Within a few days after receipt of the notice to which we have heretofore referred the Carrier requested the Union Switch and Signal Company to furnish it with a statement outlining details of the work performed by it in overhauling the twelve signals. In compliance with this request the Company made a report to the Carrier under date of November 17, 1949, in the form of a letter, written by H. S. Loomis, its Vice-President, which was offered and received in evidence at all hearings before this Division of the Board. The Organization insists this evidence should be disregarded because it was obtained at the Carrier's request after notice this proceeding was to be instituted. We do not understand that to be a ground for the rejection of testimony. Nor do we find anything in the record to warrant a conclusion the statements contained in this letter were untrue. In fact, no effort was made to refute them. In addition the major portion of such statements were corroborated by the Carrier's Chief Engineer Communication and Signaling. Therefore we are obliged to give them full force and effect. In view of the all decisive issue in this case, i.e., whether the Carrier's action in sending the involved signal relays to the manufacturer took work from its employees in violation of the Agreement, this letter becomes of utmost importance. For that reason, even though it is lengthy and will encumber this Opinion, we are impelled to quote it in too. It reads:

"As requested in your letter of November 11, 1949, we have reviewed the work which we did in connection with the rehabilitation of searchlight signal heads for your railroad and have the following comments for your consideration.

"The work, as you know, was not a mere repair job, but amounted to a complete reconstruction of the units. Upon receipt by us, the

units were completely dismantled, all the parts were inspected, replacements of any components were made where necessary, old parts were reconditioned and the signals completely reassembled and tested so that the end result was a new signal until equivalent in all respects to one which you would receive on a new order.

"During the rehabilitation program, a great many operations were performed by skilled workmen trained and experienced with these devices and provided with special equipment necessary to perform the various operations. Without any attempt to review the entire procedure, we would like to call your attention to a few of the special steps which were involved:

"(1). The old plating was stripped from all steel parts of the magnetic circuit and then these parts were replated with a first coat of tin. This work involves elaborate and expensive equipment both for stripping the old plating and for applying the new protection of cadmium and tin, (cadmium and tin in 1949 only). Furthermore, skilled operators are required to operate this equipment in order to insure that the final product shall be of high quality.

"(2). The old plating was removed from all brass and bronze parts and then these parts were replated with nickel and tin. This step also requires elaborate plant facilities and must be carried out under strictly controlled conditions by experienced operators. 1947 to 1949 repairs.

"(3). The top case and adapter casting and reflector retaining ring were carefully cleaned to remove all of the old paint and then these parts were repainted with special baked enamel. Special equipment, including drying facilities, are necessary to apply paint of this kind properly. Some of these parts are aluminum and during the rehabilitation program the enamel was removed from all the aluminum castings and those parts were anodized with special apparatus and subsequently repainted before assembly.

"(4). In addition to the surface treatment of the magnetic parts, the permanent magnets were demagnetized and remagnetized after replating. A special process of pre-aging was also carried out and then the magnetic strength was carefully measured. All of these steps require special equipment. 1947 to 1949 repairs.

"(5). Each signal unit was equipped with a new spectacle vane complete with a new armature shaft and lead counterweights. Expensive fixtures are required for balancing the armature assembly and for assembling the pole shoes to the armature. 1947 to 1949 repairs.

"(6). All old steel knife edge bearings and bearing caps were replaced with new design. In order to insure proper functioning, these steps should be carried out by skilled personnel trained to do the work. 1947 to 1949 repairs.

"(7). During 1947 and 1948 all contacts and contact operating links were removed and replaced with new parts. During 1949, all contacts and contact operating links were removed and replaced with a new design without links or pins. Special tools and fixtures are required for this work.

"(8). All coils were removed and inspected. If they failed to pass the electrical tests they were scrapped and replaced with new coils. Old coils which passed the electrical inspection were baked in an electric oven and then the covers and leads were removed and new leads and covers installed, whereupon the coils were given a special dip and baking treatment. The baking of these coils, both for the removal of the covers and for the final treatment requires electric

ovens with accurate temperature control and involves skill and experience in carrying out the necessary processes. 1947 to 1949 repairs.

"(9). The reflector assemblies were completely overhauled, the reflector housings anodized, (anodizing began in 1949), a new socket assembly and socket guard installed, and new reflectors were installed where required. The socket must be adjusted accurately to its proper position in the signal unit and this is done optically in a dark room which must be equipped with special apparatus involving various optical standards and other devices, the proper use of which can be made only by skilled technicians.

"Many other operations were performed, but the steps described above will give a general idea of the highly specialized character of the work. The whole program required special plant facilities, equipment, gauges, jigs, fixtures and tools representing a very substantial capital investment and could not have been carried out without the attention of skilled workmen possessed of special training and experience going far beyond the ordinarily required for simple routine maintenance.

"In connection with the contact structure, you will remember that many of the parts which were substituted for the old structure followed a new design. The parts which we assembled in the signal units during the rehabilitation program were not standard and were not generally available to the trade but were installed on these signals to meet the special requirements of the Atlantic Coast Line. We were able to do this because we had developed this engineering change and had discussed the matter fully with your office, but this change in contact structure would have been difficult, if not impossible, for any one outside our organization because of the lack of familiarity with the results to be accomplished and the lack of availability of the necessary parts.

"In carrying out this program, the signal units were completely disassembled and new components substituted where required. This was very simple in our factory because the required components could be withdrawn from stock. Had the job been attempted in your shop, however, the necessary replacement parts could not have been determined until the units were completely disassembled and then new parts would have been delayed while orders were prepared, forwarded to the manufacturer and filled. Inevitable delay would have resulted.

"One other factor should be brought to your attention. We have patents relating to the structure of the searchlight signals involved in this program. As an example, we have a patent covering the conical roundel mounted in the spectacle of the searchlight signal to prevent phantom indications. Part of the rehabilitation program was to equip with the conical roundel the signals not previously furnished with this device.

"It is hoped that these comments will be helpful to you in your consideration of the problem with the Brotherhood. You will appreciate that the shortness of time has made it necessary to deal with the matter in rather a superficial way. If, as the negotiation proceeds, you have need of further information, we shall be glad to be of all possible assistance."

Before giving consideration to the cause on its merits we pause to give attention to the carrier's contention Rule 50 of the Agreement, providing that an employee who considers he has been unjustly treated must make written request for a hearing within ten days of the cause of complaint, precludes consideration of the cause because no claim was made within that period of time, also to its contention the claim is barred by laches, i.e., in-

excusable delay in asserting it. There is no merit to either contention. Rule 50 relates to matters personal to an individual and has no application to a claim such as is here involved. The doctrine of laches cannot be successfully invoked because the record fails to reveal that the carrier was prejudiced by whatever delay there was in filing the claim. For a further and more complete answer to both contentions see Award 2925.

The Organization's claim the work assigned to the Signal Company belonged to them is based squarely upon the scope rule heretofore quoted. It points to the broad language used therein and insists it is all inclusive and covers any and all signal work regardless of its character and irrespective of whether the carrier had adequate facilities or employees qualified to perform it.

At the outset it must be conceded the general rule is that a scope rule as broad as the one here in question reserves all work historically, traditionally, customarily and usually performed by the employees covered by its terms. Needless to say its converse is that work not possessing such characteristics is not within the terms of the Agreement. We doubt that work so highly specialized as that here involved can be held to be work that has been historically, traditionally, customarily and usually performed by signalmen. But our decision in this case need not be based entirely upon that premise. There is no fixed yardstick for determining whether work of a certain type is covered by the terms of an Agreement when that question arises. It can, however, be stated that when it does arise its decision depends upon the particular facts involved viewed in the light of the cardinal rule of contractual interpretation that it is the duty of the person or tribunal charged with the duty of construing the contract to ascertain the intention of the parties and give effect to that intention whenever possible. In the face of a record conclusively establishing that on the date of the execution of the current Agreement the employees did not possess the skill or the carrier the equipment necessary to perform such highly specialized work, we are forced to the conclusion that neither the carrier nor the employees intended that such work was to come within the scope of their contract.

The conclusion just announced is, we believe, fully supported by our decisions, many of which recognize and apply the rules that work which is so unusual in character and of such a nature it can be said the contracting parties did not contemplate its inclusion in the Agreement or work that requires equipment and skill greater than that possessed by the carrier may be contracted without violating an Agreement notwithstanding the provisions of a scope rule such as is here involved, see Award 2338, 2465, 3206, 3839, 4100, 4158 and 4776. See also Award 2812 and 3251 which recognize the rule announced in the foregoing decisions even though they hold that under the facts the work there in question came within the scope of the involved Agreements.

Much is to be found in the respective submissions of the parties with respect to (1) the proper classification to be given the type of work here involved, (2) whether the carrier was required to provide the necessary skill, equipment and facilities for the performance of such work, (3) whether a Memorandum Agreement entered into between the parties prior to the effective date of the contract, relating to the performance of a certain type if clearly within the scope of its provisions, constituted an exception to its scope rule and hence requires application of the rule that when one or more exceptions to a provisions of a contract are expressed no other or further exceptions are to be implied and (4) whether the carrier was required to negotiate with the Organization and procure its consent to contract the work in question in order to avoid a violation of the current contract. We have not overlooked contentions advanced with respect to the matters to which we have just referred. The fact is we have purposely refrained from discussing or passing upon them because they all relate or pertain to situations where work is to be regarded as within the purview of the scope of an agreement as originally executed and have no application where—as here—that work was never encompassed by its terms.

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 Employees involved in this dispute are respectively carrier and employees 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 work contracted by the carrier was not within the scope of the current Agreement or in violation of its terms.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of September, 1950.