Award No. 5246
Docket No. SG-5077

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad, representing the employes on the Staten Island Rapid Transit Railway Company, that;

(a) The Carrier violated and continues to violate the provisions of the current agreement when it failed to apply the scope, classification, hours of service, and other provisions of the Signalmen's Agreement, dated November 19, 1925, as amended, by assigning generally recognized signal work to persons not covered by the working agreement.

(b) Claim that the signal employes who were adversely affected by this improper assignment of work be compensated at their regular rate of pay on the basis of time and one-half for an equal amount of time to that required by persons who hold no rights under the agreement, to perform this signal work.

EMPLOYES' STATEMENT OF FACTS: The signal work involved in this claim consists of the rehabilitation or reconstruction of signal and interlocking facilities at St. George Terminal on the Staten Island Rapid Transit Railway due to the rearranging and rebuilding of dock and ferry facilities at this point. The signal work in connection with this project is being performed by persons who have no employment relation with the Staten Island Rapid Transit Railway Company and hold no rights under the Signalmen's Agreement on that property.

Signal department employes were available and could have been used to perform this work in accordance with agreement rules. All signal work on this Carrier is covered by an agreement between the parties and the employes have performed all work in connection with any maintenance, repair or renewal at this point in the past.

There is an Agreement between the parties to this dispute bearing effective date of November 19, 1925 and request is made that it be made a part of the record.

This claim has been handled in the usual manner on the property without reaching satisfactory settlement.

CARRIER'S STATEMENT OF FACTS: The Staten Island Rapid Transit Railway Company occupies a position of tenant of the City of New York,

3. The record here is silent as to any particulars supporting the damages claimed in the form of the penaltv wage claims sought here.

On the basis of all that is contained herein, the Carrier petitions the Division to find this protest as being one without merit and to deny it and the wage claims emergent therefrom.

OPINION OF BOARD: The claim of the General Committee is that the Carrier violated the Signalmen's Agreement when the rehabilitation and reconstruction of signal and interlocking facilities at the St. George Terminal were performed by the City of New York; and the General Committee requests compensation at time and one-half rate for the signal employes adversely affected.

The parties have brought this matter to the Board on a joint submission. The facts out of which this dispute arose are, briefly, as follows:

The Carrier occupied, in addition to its own, land it had leased from the City of New York, and it used facilities furnished by the City at the St. George Municipal Ferry Terminal for which it paid a rental fee. A fire destroyed the Terminal; and thereafter the City undertook to rebuild it in its entirety, including railway approaches. An agreement was entered into between the City and the Carrier wherein the Carrier transferred land to the City as would be occupied by the Municipal Terminal; and the City undertook, without cost to the Carrier, to construct the project, including the relocation and reconstruction of Terminal and railway operating facilities within the Terminal. Upon completion of the reconstruction, the City agreed to lease to the Carrier the railroad portion of the Terminal. Included in this reconstruction are the interlocking and signal systems, which are being constructed and installed by persons and firms under contracts with the City of New York. The Carrier is not a party to such contracts. Prior to the fire, the Carrier had formulated plans for the reconstruction of its signal system at this Terminal; but it does not appear that the work being done by the City is being performed in accordance with these earlier plans. In making necessary changes and relocations of the signal systems operated by the Carrier during the course of the reconstruction of the Terminal, the employes of the Carrier have been used. They have not, however, performed any of the work under contract by the City.

The work generally recognized as signal work belongs to the employes of the Carrier covered under the Scope Rule of the Petitioners' Agreement. But the Scope Rule of a collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad. That is, the Scope Rule of an agreement on one property does not cover like work on another property not under the control of the specific Carrier. On the other hand, all of the work of the type embraced within a collective agreement belongs to the employes covered thereunder. The Carrier may not remove it therefrom by contract, except under conditions not pertinent here. Award 5218 has been cited on behalf of Petitioners. But in that case the work involved tracks and docks owned by the Carrier, and the Carrier contracted out the work.

Here the situation is just the reverse. The interlocking and signal systems, the subject of this claim, are being constructed by the City of New York on its own land and under contracts made by it and to which the Carrier is not a party. Nor does the record indicate that the Carrier has controlled and directed such work as was undertaken by the City; and there is nothing in the record that would indicate that the Carrier made the arrangement in order to remove work from the Signalmen.

A careful analysis of the facts of record leads us to the conclusion that the work in question did not belong to the Carrier and, therefore, was not covered by the Scope Rule of the Signalmen's Agreement. This is not a case where the Carrier farmed out work; it never controlled it or had the

disposition of it. We must conclude, therefore that the claims are not valid.

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

The facts do not show a violation of the Signalmen's Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of March, 1951.