Award No. 5476
Docket No. SG-5548

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement when, on or about August 1, 1949 it contracted or otherwise arranged for the diversion of generally recognized signal work to persons not covered by the Rock Island—Signalmen's working agreement. (Specifically, the signal work involved is the construction of concrete foundations for improvements to Root Street Interlocking, Chicago, Illinois.)

(b) Employes covered by the current "Rock Island Signalmen's" working agreement, assigned to Gang No. 3 whose working assignment was affected by reason of this violation, be compensated at their proper rate of pay on the basis of time and one-half for the amount of time equivalent to that consumed by persons not covered by the agreement in performing the diverted scope work.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of July 1, 1938 and as partially revised on January 1, 1949, is in effect between the parties to this dispute. This agreement governs the rates of pay, hours of service, seniority, and other working conditions of all employes in The Rock Island Signal Department who perform the work covered and defined in the Scope rule of the agreement.

There are no exceptions to the Scope rule which permit the diversion of the signal work comprehended in this claim.

The Scope work involved in this dispute is on a joint facility portion of this Carrier. The right of way at the location of the work in this dispute is used jointly by The New York Central Railroad and the Chicago, Rock Island and Pacific Railroad (herein referred to as the Rock Island).

On or about August 1, 1949, the Rock Island modified the interlocking facilities of its Root Street Interlocking Plant. In modifying its facilities on the interlocking plant, it was necessary to construct concrete foundations for signals and their supports, which led to the basis of the instant claim.

One signal foundation was constructed by Rock Island Signal Department employes.

reasonable request to furnish the names of the Claimants and other related information necessary and essential to complete the handling on the property which is a condition precedent to appeal to this Board.

OPINION OF BOARD: This is a claim for work lost by employes under the Signalmen's Agreement because the Carrier permitted employes of another carrier to do work which is alleged to have belonged to them.

The record shows that interlocking facilities designated as the Root Street Interlocking Plant have been constructed and maintained for many years. The interlocking facilities are used jointly by the New York Central and the Carrier (Rock Island) here involved. The interlocking plant was originally constructed by the Carrier and has since been maintained by it. The understanding with the New York Central with respect thereto is not shown in the record.

On or about August 1, 1949, certain changes and modifications were made in the interlocking plant. It was necessary to construct certain concrete foundations for signals and signal supports which led to the claim here made. The record shows that one signal foundation was constructed by Carrier's Signal Department employes. Another was not included in the dispute because it served the dual purpose of signal foundation and retaining wall. A third signal foundation was constructed by New York Central employes and constitutes the basis for the dispute.

The foundation in question was built to support a cantilever signal bridge. It was located about 15 feet north of 37th Street on New York Central property. The construction work was performed by New York Central employes and was paid for by the New York Central Railroad. Carrier asserts that the construction was for the sole benefit and use of the New York Central Railroad while the Organization claims that it was a part of the joint facility irrespective of location or use.

The Carrier contends that as the work in question was performed wholly on the property of the New York Central and paid for by that railroad that it was work over which it had no control because it was not on the property of the Carrier. This does not necessarily follow. Clearly the work would belong to employes of the Carrier if Carrier contacted with the New York Central for its performance as a matter incidental to the operation of its own railroad. The Carrier does not dispute that this joint facility has had the signal appurtenances maintained by its employes. It seems to us that the building of a foundation for a cantilever signal bridge would ordinarily be considered as maintenance. We are of the opinion that the work belongs to signalmen. The question before us is whether it belongs under the Signalmen's Agreement with this Carrier. The Carrier argues that the Organization has not shown that Carrier was obligated to perform this work. In this respect we point out that Carrier admits that it constructed the interlocking and subsequently maintained it. Carrier's signal engineer states in a letter to the general chairman that Carrier was authorized by the New York Central to interlock a series of crossovers between tracks 2 and 5 to be operated from the Root Street Interlocking. The authorization by the New York Central was in the possession of the Carrier and not the Organization. If its nature was such as to exclude the construction of the foundation here involved, it would have been an easy matter to have produced it for that purpose. We think the record is adequate to show that Carrier was authorized to do the work in question, that the work belonged to signalmen and had been performed by them in the past. If the work in question was excluded by the authorization, it was the duty of the Carrier to produce the authorization. An affirmative award is in order. It will be allowed at the pro rata rate. See Awards 4244, 5271.

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 Agreement was violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.