Award No. 6903
Docket No. SG-6842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad:

(a) That the Carrier violated the provisions of the current agreement, Telegraph and Signal, when on or about September 1, 1950, it contracted or farmed out work generally recognized as Telegraph and Signal work, installation of wires and cable used on the Intelex System, Pennsylvania Station, New York, which work accrues to employes of the New York Division, Telegraph and Signal Department, who are covered by the current Telegraph and Signal Department agreement.

(b) That a comparable number of Telegraph and Signal Department hourly-rated employes of the New York Division, who are entitled to this work, be compensated as provided in Article 2, Section 8, at the time and one-half rate for all time made by Contractor's hourly-rated workers while installing the cables and wires for the Intelex System.

(c) That a comparable number of Telegraph and Signal Department monthly-rated Foremen of the New York Division who were entitled to this work be compensated as provided in Article 5, Section 1 (a), for all time made by Contractor's Foremen while supervising this work.

EMPLOYES' STATEMENT OF FACTS: To expedite the handling of train reservations, equipment known as Intelex Automatic Space Control and Intelex Automatic Ticket Information was installed in ticket offices in Pennsylvania Station, New York and Newark; Division Passenger Agent and Travel Bureau in Pennsylvania Station, New York; Hudson Terminal, New York; City ticket offices in New York and Newark.

The wires and cable for this equipment were installed by employes of the International Standard Trading Corporation, alongside of Telegraph and Signal Department cable from a point from the reservation bureau to a point in the "Pipe Gallery" underneath ticket offices which are in the main waiting room. This cable was made fast by tying to pipe hangers by the employes of the International Standard Trading Corporation.

to indicate that any such damage has accrued. Under these circumstances, such a claim is too vague and indefinite to be considered by the Board and does not furnish any basis upon which a valid award can be made.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto beyond the Carrier's control and not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement, particularly Exception (a) to the Scope Rule, employes of the International Standard Trading Corporation performed no service in connection with the installation of Intelex equipment on the Carrier's property at Pennsylvania Station, New York, that accrues exclusively to employes of the T. & S. Department; that the applicable Agreement was not violated; and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or their duly authorized representatives.

OPINION OF BOARD: Record shows Carrier leased an electronic device, contrivance, apparatus or the like, known as Intelex Automatic Space Control and Intelex Automatic Ticket Information, now in use in Pennsylvania Station, New York, and utilized for handling passenger reservation.

This being something that Carrier obviously could not acquire from other than a limited source, it does not appear to have been in position to dictate terms. It agreed to a package deal, whereby lessor retains ownership of all equipment, including certain cable necessary to operations and which lessor installed and maintains along with its other equipment on Carrier's property.

Petitioner claims that the work of installing this cable was work which historically and by custom and practice belongs to the T & S Department under the scope rule of its Agreement with Carrier.

Carrier defends against the claimed violation by citing an express exception to the scope rule which provides:

> "(a) This Agreement shall not be construed as granting to employes coming within its Scope the exclusive right to perform the work of installing or maintaining other than Railroad owned facilities or equipment located on the property of the aforesaid railroads."

In addition to its reliance on custom and practice, Petitioner says the quoted language does not mean what it appears to mean; that "located", as that word is used, means in point of time and not place; that the words, "exclusive right" are words of limitation which operate against the exception to the scope rule and are intended to reserve to Employes all rights previously enjoyed under an established practice and which permits the Employes under the contract to do the same kind of work as that which now is in dispute.

Carrier, feeling fairly secure in the language of the rule and the way scope rules of these agreements usually operate, rests its case mainly on the rule and the general proposition that practice which has grown up on the property cannot be used to vary terms of an agreement couched in language that is clear and free from ambiguity.

Proof of usage, custom and practice is quite relevant generally, and most important usually, in proving up what work is subject to a scope rule if the area of work and work procedures are not described and set forth in detail by the rule. Proof of practice on the property also serves as some evidence of an accepted meaning of language which is ambiguous as used, or appears to be so to others. The Employes use practice here to explain their version of work protected by contract and since we think their version is contrary to language of the rule, we cannot agree to its use in any such measure or fashion for purposes of deciding this dispute.

Neither can we lend support to a painful distortion of language in order to give meaning to the word "located" for which Petitioner contends. Exception to the scope rule covers "installing" of equipment as well as maintenance of equipment already installed, so it cannot properly be said to apply only to what was on the property when the rule was negotiated.

Without changing the result, the concession can be made that the Employes now believe, and did believe at the time they caused or permitted to be inserted in the agreed on exceptions to the scope rule the words, "exclusive right", they were getting something contrary to what in fact is expressed and what the Carrier says was intended.

It is not binding that one party believes or intends his utterances or choice of words to mean one thing if, as commonly used, they are understood to mean something else. It also is the accepted doctrine that words are to be given their usual, customary, and ordinary meaning unless another meaning is dictated by usage in the actual setting where used. In these cases we use the accepted meaning of words as they appear and are found in collective agreements for railroad employments.

The keystone of the scope rule is, as the Employes usually contend, a right to lay claim to and perform all work subject to scope of the Agreement to the exclusion of all others. Hundreds of claims have been sustained by this Board on that premise alone. It would tend to unsettle a principle, now fairly well settled, should we honor this claim by saying that the Employes, when they agreed that work of a stated character was to be excepted from the Agreement so far as an exclusive right to the work is concerned, meant to retain something which they presumably had and which we say they contracted away on agreeing that:

> "(a) This Agreement shall not be construed as granting to employes coming within its Scope the exclusive right to perform the work * * *."

The equipment in question is owned and was installed on the property by the one owning the equipment. Under the self-serving language of the Agreement this was not in violation of exclusive rights conferred on or enjoyed by the Employes under their Agreement with the Carrier, and, therefore was not violative of the terms of the Agreement.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1955.