Award No. 7833
Docket No. SG-7754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

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

Claim of the T. & S. Committee that the Company violated the Scope of the Agreement by having tags for the marking of wires in the installation of new signaling facilities made by a person, or persons, other than T. & S. employes entitled to do signal work on the Columbus Division.

Claim that the employes of the Columbus Division should be paid for the amount of time that would be required to make the same number of tags as the number made by an outside concern for the above named installations, on account of this work being taken from them.

EMPLOYES STATEMENT OF FACTS: The signal apparatus and work involved in this case consists of the lettering and numbering of tags used for identifying of wires carrying signal and interlocking circuits and other purposes in the T. & S. Department on the Columbus Division. The Board will please understand that the purchase of blank tags by the Carrier is not involved in this case.

In progressing this claim on the property a "Joint Statement of Agreed-Upon-Facts" was executed in Superintendent W. H. Mapp's office at Columbus, Ohio, on March 17, 1953 which reads:

"**JOINT STATEMENT OF AGREED-UPON-FACTS:** For many years prior to the date on which the claim in the instant case was submitted, employes of the T. & S. Department on the Columbus Division were given the work of making tags that were used for the purpose of marking or identifying various wires in the installation of signaling facilities. The orignal tags so used were made of fiber and by use of metal stencils and later a stencilling machine, the letters and figures on the tags were indented on the fiber. The indentations were then filled in with white ink, thus permitting the wire number on the tag to be easily read.

More recently, however, a manufacturer has offered a printed tag with a plastic coating covering the letters and numbers. A list of

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, 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 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 there has been no violation of the Scope Rule of the applicable Agreement in the instant case, and that the unnamed 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.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The case is presented by the T. & S. Committee charging a violation of the Scope of the Agreement in that the company contracted out work previously performed by T. & S. employes on the Columbus Division.

The parties, in their submission of March 17, 1953, formulated a "Joint" Statement of "Agreed-Upon-Facts" which reads as follows:

> "JOINT STATEMENT OF AGREED-UPON-FACTS: For many years prior to the date on which the claim in the instant case was submitted, employes of the T. & S. Department on the Columbus Division were given the work of making tags that were used for the purpose of marking or identifying various wires in the installation of signaling facilities. The orginal tags so used were made of Fiber and by use of metal stencils and later a stencilling machine, the letters and figures on the tags were indented on the fiber. The indentations were then filled in with white ink, thus permitting the wire number on the tag to be easily read.
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> "More recently, however, a manufacturer has offered a printed tag with a plastic coating covering the letters and numbers. A list of the desired tags, together with information as to the inscription to be placed thereon is furnished and the tags are then custom-made by the manufacturer for each relay case.

"Because of the newly developed plastic wire tags being used in the marking of wires during the installation of new signaling facilities at East Manchester, Brookville, East Brookville and Dutoit St., Dayton, Ohio, (all points on the Columbus Division) in lieu of tags made by T. & S. Department employes, the Local Chairman representing T. & S. employes of the Columbus Division submitted the claims as outlined in the Subject on this case to the Supervisor, Telegraph & Signals, under date of June 11th, 1952. Claim was denied by the Supervisor, T. & S. in his letter to the Local Chairman dated June 19th, 1952. Claim was then listed with the Superintendent for discussion, discussed on July 2nd, 1952 and denied by his letter of July 30th, 1952, pending a further investigation of the facts involved. The Superintendent's inquiry developed that the new manufactured plastic tags were being used at various other points on the System; the Superintendent then gave a final letter of denial to the Local Chairman in a letter dated October 29th, 1952. Under date of November 11th, 1952, the Local Chairman requested that the matter be progressed by Joint Submission."

The employes contend that the work of putting the wire designation on tags used for marking wires in the installation of new signaling facilities has been performed by T. & S. employes for many years and that the Company's purchase of the plastic tags diverted work to persons not covered by the T. & S. Agreement. That the plastic tags referred to in the Joint Statement were custom made to the company's specifications and not stock items. That when and if technological improvements are contemplated, the company should consult with the Signalmen's Committee when and if the technological improvement involves the Scope rule of the working agreement.

The company maintains that the innovation of the plastic tags was brought about by the necessity for improvement because of the inadequacies of the previous system, namely that in a short time the fiber tags faded or became dirty and unintelligible. The new type tags marked with black numerals and letters on a white background covered with a plastic coating are asserted to be more durable and discernible (see Exhibits A, B and C of the submission). That the process of printing the identifying numbers and letters on the new plastic tags was an integral step in their manufacture. It is also submitted that the use of plastic tags is but a natural evolution in the development and modernization of tag technique.

It is not disputed that when the tags were delivered to the property they were installed, as previously, by T. & S. employes.

The Scope Rule in so far as it is pertinent to this docket reads as follows:

"These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, and Baltimore and Eastern Railroad Company and their respective Telegraph and Signal Department employes, of the classifications herein set forth (and hereafter these Agreements for the sake of convenience shall be referred to as "the Agreement")—**engaged in the installation and maintenance of** all signals, interlockings, telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and the maintenance of car retarder systems, and **all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work—represented by the Brotherhood of Railroad Signalmen of America** * * *" (Emphasis ours.)

Before addressing ourselves to the merits of the case, disposition must be made concerning the Company's contention that the claim is barred by delay on the part of the employes in progressing it to this Board, subsequent to final handling on the property. This contention must be rejected, and the claim found to have been timely progressed, on the authority of Article V, Sec. 2, effective January 1, 1955, of the August 21, 1954 Agreement, which provides, with respect to time limits for progressing claims or grievances, that any claim on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, that a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment. Here the claim was finally denied on the property in April, 1953; notice of intent to file an ex parte submission was served in May, 1955 and the submission made in September, 1955 due to three thirty day extensions granted the company to file its submission.

The question to be resolved is whether the company's purchase of the plastic tags described herein and their delivery to the property in finished form, to be installed by T. & S. employes, violated the Scope Rule of the Agreement.

The company cites Award 4662, involving the same two parties, in support of its position. In that case the Board said:

> "This Board cannot agree with the contentions of the Claimant. The purchase and delivery to the Carrier of any manufactured piece of signal equipment or device cannot be a violation of the scope Rule. The rights of Employes under that rule are confined to work generally recognized as telegraph, telephone and signal work in connection with the installation and maintenance thereof, and such wiring as may be necessary on the property of Carrier in the installation of such devices. The Employes performed all the work necessary in installation and wiring of the equipment involved here after its purchase from the manufacturer."

In Award 5044, this Board, with Referee Carter sitting as a member, had for its consideration Award 4662 urged as controlling by the Carrier and Award 4713, also cited to us as authority for the instant case, argued as controlling by the Organization. We held in Award 5044 that the principle in the two cases was the same and adhered to the interpretation established in Award 4662. In Award 4662 it was held that the purchase and delivery of any manufactured piece of signal equipment or device cannot be a violation of the Scope rule of the Signalmen's Agreement; in Award 4713 the holding was directly to the contrary.

The reasoning adopted by the Board in Award 5044, where the Scope rule included "construction", is reaffirmed and held controlling here. There we said:

> "The purchase of equipment is a function of management. It may purchase by item or in quantity; it may purchase with or without warranties as to its functional operation; it may purchase by stock items or by having it built to order; it may purchase equipment wholly or partially assembled; all without infringing upon the work contracted to signalmen. When material or equipment is purchased and delivered to the property of the Carrier, any construction, installation, maintenance and repair growing out of its use on the property of the Carrier within the scope of the generally recognized work of a craft or of work specifically assigned to such craft, it is work which belongs to the employes of that craft.
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> "There is no contracting or farming out of work belonging to these claimants in the present case. The equipment was never purchased and delivered on the property of the Carrier for use until after the work claimed had been performed at the factory. The

rights of employes never attached until the Carrier acquired possession of it. We quite agree that if the equipment has been delivered to the Carrier in such a manner that the rights of claimants under the scope rule attached, that a contracting of the wiring and assembly of the unit would then be a farming out of work belonging to these employes. We fail to see, however, that a purchase of new equipment in whatever form it may exist, can constitute a farming out of work under the Agreement for the fundamental reason that it never had been under the Agreement. That which was never within the scope of an agreement cannot be farmed out."

The employes also cite Award 6664 involving Signalmen wherein the agreement was held to have been violated. We do not find any conflict between the conclusion reached in that Award and in the conclusion reached in Awards 4662 and 5044. In fact, Award 6664 is supported by both Awards.

For the foregoing reasons we find that there was no violation 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 26th day of April, 1957.