Award No. 7965
Docket No. SG-7965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago and Western Indiana Railroad that:

(a) The Carrier violated the Signalmen's Agreement when it transferred, or caused to have transferred, generally recognized signal work as covered by the Scope rule, to persons not covered by the Chicago and Western Indiana-Signalmen's working agreement.

(Specifically, the generally recognized signal work cited above consists of the fitting up and wiring of signal instrument cases and panels which constitute component parts of the 47th Street Interlocking Plant in Chicago, Ill. A portion of these completely wired cases and panels was received at 47th Street on or about January 23, 1953. Others were received subsequent thereto.)

(b) Claim that the signal gang employes covered by the Signalmen's Agreement working at the 47th Street Interlocking Plant, who were engaged in making heavy repairs and renewals thereto when these instrument cases and panels arrived, be compensated for their proportionate share 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 transferred generally recognized signal work.

EMPLOYES' STATEMENT OF FACTS: The signal apparatus and signal work involved in this unsettled claim consists of segments and portions of the heavy renewals and modernization to the electro-pneumatic interlocking machine located where this Carrier crosses 47th Street in Chicago, Illinois.

An electro-pneumatic interlocking machine is defined in Chapter XIV—Definitions, American Railway Signaling and Practices, published by the Signal Section, A. A. R., as "An interlocking machine for the control of electro-pneumatic operated functions." This electro-pneumatic machine will be hereinafter referred to as the plant.

An agreement bearing effective date of September 1, 1949, as revised, is in effect between the parties to this dispute and covers all the employes of this Carrier who perform generally recognized signal work. This agreement gov-

awards support the Carrier's position; therefore, this claim is without merit and should be denied. See Awards 5028, 6717 and 6903.

All necessary data in support of the Carrier's position has been presented to the employes and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier here involved purchased from Union Switch and Signal Division 9 welded steel instrument cases and 11 relay panels or racks fully equipped for installation by Carrier's signal forces in modernizing its 47th Street Interlocking Plant. It is Carrier's contention this was "a new installation. In fact, the removal of the old Model 14 electro pneumatic interlocking machine and its related devices (in service since 1908) and substituting a new electrically operated signal control machine and its related panels, instrument cases, etc., cannot be classed as repairs in any sense of the word."

Organization claims Carrier violated the applicable Agreement "when it transferred, or caused to have transferred, generally recognized signal work (specifically, * * * the fitting up and wiring of signal instrument cases and panels) to persons not covered by the (Carrier's) working agreement."

"This transferred scope work has," Organization asserts, "by custom and usage, as well as by the proper application of the Scope Rule, accrued to this Carrier's Signal Department employes * * *."

The case before us turns on one point, set forth by Carrier: "Whether Management, in the exercise of its proper function of purchasing, may do so by the most efficient and economical means possible, taking advantage of the latest engineering advances and obtain a completed unit or section for installation by its forces when received from the manufacturer; or is it required to purchase pieces and parts of signal apparatus and have its employes fabricate them into their proper components for subsequent installation."

Organization claims that "the provisions of the Scope Rule provide that the employes who are classified and covered by the Agreement and who have duly established and hold seniority thereunder shall have and do have the sole and exclusive right to perform all the signal work accruing to them under the agreement."

Organization further "submits that the Scope Rule clearly and definitely spells out 'the wiring of signal instrument cases' and does not specifically or inferentially except their counterparts, namely, instrument panels; * * * that the claimants (here) were employes in the signal gangs working on the project of heavy renewals and modernization of the plant * * * and were adversely affected as the workers of the Union Switch and Signal Company had no established seniority on this property nor rights to the scope work performed by them."

Among the awards cited by Organization is 4713 (Carmody). It is argued on behalf of Organization that Award 4713, which sustained the same organization here petitioning, possessed "many of the elements and contentions presented in the instant dispute."

We have read that Award and compared the language of the Scope Rule obtaining there with the Scope Rule now before us.

The Scope Rule in 4713 contains language different than the instant rule. It provides that the agreement governs the rates of pay, hours of service and working conditions of employes who **"construct,** install, maintain and/or repair signals, etc."

At page 3, in Employes' Statement of Facts for Award 4713, we note the Organization to say:

> "Until about the latter part of 1943 all **construction** and installation work in connection with CTC projects on this Carrier was performed by the employes covered by this Agreement." (Emphasis added.)

And under Position of Employes, page 9, Organization states:

> "The employes classified under this rule are entitled to all the mechanics' work accruing to them when the Carrier **constructs** or installs a CTC system." (Emphasis added.)

Carrier involved in that case, in its Statement of Facts (page 16), observed:

> "It was the position of the Brotherhood representatives in that conference that the word 'construct' in the Scope Rule * * * created for and preserved to signal employes covered thereby the right to completely wire and assemble all instrument houses, * * * and that the rule was violated when any portion of the wiring or assembling was done by the manufacturer. * * *"

The Board in Award 5044 (Carter) denied Organization's claim in a case strikingly similar to that now before us.

The word "construct" appeared in the Scope Rule in that case. This Division denied the claim. The Scope Rule there involved, while not including the phrase "the wiring of signal instrument cases" which is included in the Rule now before us, did contain the phrase "necessary signal work on interlocking plants * * * as well as any other work generally recognized as signal work."

However, the Scope Rule here before us makes no reference to "construction", but does cover "employes * * * engaged in the installation and maintenance of all signals, interlockings * * * but including * * * the wiring of signal instrument cases."

The same type of Scope Rule was at issue in Award 4662 (Connell) which is cited in behalf of Carrier.

While we hold in the instant case that the reasoning and findings of this Board in Awards 5044 and 4662 are applicable here, we reiterate (Award 5044):

> "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."

It is not questioned that Carrier's signal employes performed all the work necessary to the installation of the equipment on Carrier's property.

The claim will be denied.

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 (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1957.