

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

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**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 Company for:

Thirty-two (32) hours, punitive time at the going rate in favor of J. J. Fitzsimmons, Maintainer, Macksville, Indiana, account of Bridge and Building Department's Paint Gang Personnel, painting Liggett, Indiana, Central Traffic Control Instrument House.

**EMPLOYES' STATEMENT OF FACTS:** Claimant J. J. Fitzsimmons was regularly assigned as Signal Maintainer with headquarters at Macksville, Indiana.

The Centralized Traffic Control case involved in this dispute is located on the signal maintenance territory of the claimant, and he is assigned to the work of maintaining this instrument case.

The work of painting signal apparatus has been performed by the employees of the Signal Department for many years. The work of painting instrument cases housing signal equipment has always been assigned to such employees prior to the installation of the instrument case involved in this dispute.

This claim has been handled in the usual manner on the property and was progressed up to and including the highest officer of the Carrier designated by the management to whom appeals may be made, without reaching a satisfactory settlement.

There is an agreement between the parties involved in this dispute for rules, bearing effective date of June 1, 1943, except as otherwise specified, and rates effective September 1, 1949, except as otherwise specified. We understand there is a copy of this agreement on file with the Board and request is made that it be made a part of the record in this dispute.

**POSITION OF EMPLOYES:** It is the position of the Brotherhood that the Carrier violated the provisions of the current working agreement covering Signal Department employees when it assigned a portion of the Scope work to persons who hold no rights to the work under the provisions of the agreement. The Scope of the agreement is quoted for ready reference:

the General Chairman notified the Carrier of its rejection and the denial, and gave notice of appeal to this Board. This action by the General Chairman in filing and notifying the Carrier, approximately two years after denial, of their intention to appeal to this Board, is in our opinion an unreasonable time in which to take such further action, and certainly is not in compliance with the Railway Labor Act. See 2, 'General Purposes', as set in (4) and (5) of said section. There is nothing contained in the Act nor in the current Agreement which puts a time limit on the filing of an appeal to this Board from any denial of a claim by the Carrier, but such appeal must be prompt and orderly. Certainly the parties are entitled to a reasonable period of time in which to perfect an appeal to this Board, but a period of approximately two years in which the Organization elected to further assert its rights to this Board is unreasonable, and not within the purview of the provisions of the Railway Labor Act, and said claim should be denied. We are in accord with Award 4941, Carter Referee."

Also see Award 6495.

The Carrier respectfully submits that for the reasons set forth in the Award referred to above and throughout Carrier's Submission the claim, as presented, should be denied.

**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 Employees 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 under the applicable Agreement the employees of the Bridge and Building Department performed no service in connection with the painting of the Centralized Traffic Control house at Liggett, Indiana, that accrues exclusively to employees of the Telegraph and Signal Department; that the applicable Agreement was not violated; and that the Claimant is not entitled to the compensation which he claims.

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

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On May 1, 1952, four Painters of Carrier's Maintenance of Way Bridge and Building Department were used during their

entire tour of duty to paint a Centralized Traffic Control instrument house located at Liggett, Indiana. This facility is of all metal construction, with dimensions at 8'x13'x10'. It is entered by a door eight feet in height. Although there is conflict in the evidence, it appears that in 1948 the Carrier's M/W Bridge and Building forces constructed the foundation for this structure and also erected the housing itself, but were assisted in the latter operation by several Telegraph and Signal Department employees. It further appears that B&B men performed the original painting.

The petitioning Organization contends the use of a B&B Painter to paint the instrument house on the occasion in question (1952) was in violation of the Signalmen's Agreement in that such work is covered by the Scope Rule of said Agreement. It requests 32 hours at punitive rate for Signal Maintainer J. J. Fitzsimmons who assertedly was entitled to perform such work. The Organization urges that it has been the practice throughout the system to use Signal Department personnel for the painting both of instrument cases and of CTC instrument houses, except for three instances in recent years when, assertedly, Management began to "chisel away" at the work jurisdiction of the subject Agreement. Petitioner contends the painting of signal apparatus has been considered as signal maintenance work covered by the Scope Rule; that the painting of instrument cases has been recognized as being included in such work; and that the painting of CTC instrument houses falls within the same category since such structures are no more than large instrument cases. The Organization states the Carrier seeks to transfer the disputed work to another class of employees solely because of the size of the facility used to house signal equipment.

The Carrier urges, preliminarily, that the Board is without jurisdiction to proceed in this matter without first giving notice to employees of its Maintenance of Way Department, because said employees have performed the work in dispute at many locations on the property. Since a sustaining award would have the effect of taking such work away from these employees, they are involved in this dispute within the meaning of Section 3, First (j), of the Railway Labor Act, the Carrier asserts. On the merits, it is contended the claim should be denied due to Petitioner's excessive delay in appealing this dispute from Management's final denial. Moreover, the Carrier asserts that no provision in the controlling Agreement grants the Petitioner exclusive jurisdiction over the work in dispute; that such work has not been generally recognized as Telegraph and Signal work; and that in practice this work has been performed by both T&S and M/W employees.

We have reviewed the third party notice question as applied to the circumstances of this case. Due note has been taken of the various court decisions on the subject, including the U. S. Supreme Court ruling in the Whitehouse case (349 U. S. 366) and the Telegraphers' decision of the Circuit Court of Appeals, Eighth Circuit (229 F. 2d 59), on which the Supreme Court denied certiorari. We are of the opinion and find that notice to the Carrier's Maintenance of Way employees is not a necessary step preliminary to deciding the merits of this controversy.

The contention for denial on the ground of undue delay is without sufficient substance under the confronting facts. The claim was processed with reasonable expedition in 1952. Following Carrier's final denial on September 24, 1952, the Organization's General Chairman advised Management of the intent to appeal the dispute to this Board, and requested that the Carrier join in such submission. The request for such joint action was rejected on October 3, 1952. Although it was not until December 28, 1954 that the Organization filed with the Board a notice of its intent to file a submission on this claim, Carrier had been made aware of the Organization's intention in 1952. Moreover, we note that this is not a continuing claim, since it requests pay for a single incident.

Regarding the substantive aspect of this dispute, the Scope Rule of the controlling Agreement refers to certain general kinds of work. It covers Telegraph and Signal Department employees "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. . . ."** (Emphasis added.)

It will be seen that the Scope Rule makes no express reference to the work in dispute. Whether such work is included within the "maintenance of all signals", or whether it falls in the category of "all other work in connection with installation and maintenance (of the specified facilities) that has been generally recognized as . . . signal work", can only be ascertained by examining the intent of the parties as indicated by past practice on the property. The parties agree that on seven of the Carrier's former Divisions, it has been the practice for CTC instrument houses to be painted by T&S employees. There is disagreement regarding the practice elsewhere on the system. The Organization's survey indicates that except for three instances in recent years, employees covered by the subject Agreement have painted all the instrument houses. The Carrier's survey indicates that on five of these other Divisions this work has been performed consistently by M/W employees, while on three Division both M/W and T&S personnel have done it. Carrier also submits copy of the findings in 1951 of a joint committee containing representatives of Management and of M/W employees (Pennsylvania), recommending the granting of a claim by said employees arising out of the use of T&S personnel to paint relay houses. This action is not controlling in the Signalmen's Agreement but may be considered in determining what the practice has been.

The weight of the evidence impels the conclusion that on the system as a whole it has been the past practice for the disputed work to be done by employees of both the Telegraph and Signal Department and the Maintenance of Way Bridge and Building Department. Since the subject Agreement does not expressly confer jurisdiction over the disputed work to T&S employees, and in view of the practice as here found, it follows that the petitioning Organization does not have exclusive jurisdiction over said work. A denial award is warranted.

**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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1957.