Award No. 8084

Docket No. SG-8331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty-Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al.:

(a) That the Carrier violated the current agreement commencing on or about November 15, 1954, when it farmed out, contracted, or otherwise improperly caused or permitted Scope work at Bristol, Tenn. to be diverted and/or transferred to persons not covered by the Signalmen's Agreement on the Southern Railway System.

(b) That the signal employes of this Carrier entitled to and who were affected by this violation be paid at their respective overtime rates of pay for their proportionate share of the total time consumed by persons not covered by the agreement in performing the Scope work as referred to in part (a) of this claim. (Carrier's file SG-8429).

EMPLOYES' STATEMENT OF FACTS: On or about November 15, 1954, this Carrier farmed out, contracted, or otherwise permitted workers not covered by and who hold no seniority or rights under the Southern Railway Company's Signalmen's Agreement to perform the signal work involved in the installation of power operated switches, signals, air compressors, air lines, conduits, cables, wires and relays, removal of and end-feed, wires, cables, and associated apparatus, switch circuit controllers and their appurtenances, on a part of its property at Bristol, Tennessee.

The Carrier assigned or otherwise permitted workers not covered by the Signalmen's Agreement to perform signal work, and in so doing failed to properly apply the Scope, Classification, Hours of Service, Overtime, Seniority, and other rules and provisions of the current Signalmen's Agreement when it did not assign the signal work covered by Scope Rule of the Signalmen's Agreement to its classified Signal Department employes as defined in the Signalmen's Agreement.

The installation of the signals, power operated switches, air compressors, air lines, conduits, cables, wires, relays, and their appurtenances and appliances, as well as the removal of the end-feed, wires, cables, switch circuit

The Board having heretofore recognized the limitations placed upon it by law, and the fact that it is without authority to grant new rules or modify existing rules such as here demanded by the Brotherhood, and will, therefore, not attempt to further restrict Carrier's rights, can make a denial award for this reason, if for no other, and there are others.

CONCLUSION

Carrier has proven that:

(a) The giving of notice by the Third Division of the Adjustment Board to involved N&W signal employes and the Norfolk and Western Railway Company is not only required by Section 3 First (j) of the Railway Labor Act but is a jurisdictional prerequisite to the exercise of the statutory power conferred upon the Board by law, therefore, it is obligated by law to give such notice to the N&W and its employes of the Signalmen's class or craft before passing on the merits of the two claims here involved.

(b) Part (b) of Claim No. 1 is indefinite in that no claimants are named and no dates or amounts are specified, therefore, under Rule 21 (i) of the effective agreement, the monetary claim which the Brotherhood is here attempting to assert is barred.

(c) There was no violation of any provision contained within the four corners of the effective Signalmen's Agreement when the N&W installed in the joint terminal at Bristol the joint interlocking here involved.

(d) Past, established and accepted practices prior to and during the entire period an agreement has governed the hours of service and working conditions of employes of the Signalmen's class or craft have been for Carrier's signal forces and signal forces of other carriers to perform work in the same manner as here performed.

(e) The effective agreement here in evidence was negotiated in the light of these practices and has to be so construed.

(f) The Brotherhood and signal employes have heretofore and do now recognize these practices as reflecting the intention of the parties when they negotiated and executed the agreement here in evidence.

(g) The Board cannot sustain the claim except by disregarding the effective agreement in evidence and granting the employes a working condition not obtained by them in negotiations. Having heretofore recognized that it would not take such action, the Board is left with no alternative other than make a denial award if claims are considered on their merit.

(h) If the Board elects not to give the N&W and its employes of the Signalmen's class or craft notice of all hearings that they may be heard as required by Section 3 First (j) of the Railway Labor Act, the claims should be dismissed for want of jurisdiction. However, if such notice is given and all parties having an interest in the matter (i.e., those involved) are heard, then a denial award should be made.

All evidence submitted in support of Carrier's position is known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD:

Question of Procedure

The Carrier contends this is another case involving third parties and that the matter is not properly before the Board until notice is given them

in accordance with Section 3 of the Railway Labor Act (45 U.S.C. 153, First (j)).

We herewith dispose of this procedural question in the same manner as we did in Award 8070 (by the same Referee). We will not direct notice to any third party for the reasons stated therein.

Merits of the Case

At the start of its submission the Brotherhood states that the Carrier:

> "On or about November 15, 1954, * * * farmed out, contracted, or otherwise permitted workers not covered by * * * the * * * Signalmen's agreement to perform the signal work involved in the installation of power operated switches, signals, air compressors, air lines, conduits, cables, wires and relays, removal of an end-feed, wires, cables, and associated apparatus, switch circuit controllers and their appurtenances, on a part of its property at Bristol, Tenn."

Nowhere else in its entire file does the Brotherhood explain or specify what kind of an installation it was (except to deny that it was an interlocking plant), what was installed or removed, who did it (except a brief reference to tresspassers from another carrier), how big the project was, whether it involved one hour or a thousand, which Signalmen were entitled to the work and how much they should be compensated.

We appreciate the handicap and difficulties under which the Brotherhood has to prepare its case when much of the information about what is going on is solely in the hands of the Carrier, but the members of this Board and the Referee work under the same or greater difficulties when they cannot ascertain the pertinent facts from the record.

It is fundamental that one making a claim must substantiate it. The claimant must show facts which constitute a violation of his rights. Broad general statements that the Carrier has diverted signal work covered by the Agreement is not specific enough to enable this Board to pass judgment upon the facts and the application of the Agreement thereto.

The Brotherhood has simply failed to state a case.

The Carrier, the Southern Railway Company, states that what was involved here was the construction of an interlocking plant partially on Southern and mostly on Norfolk and Western Railway property with controls installed in the N. and W. passenger station.

It shows that there has been joint use and operation of the Bristol facilities of these two Carriers since 1903, long before any labor agreements; that all Southern terminal operations at Bristol (with exceptions not here pertinent) are performed by N. and W. employes; that in 31 other locations jointly owned interlocking plants have been installed and maintained by employes of N. and W. and other railroads and that at 30 other locations jointly owned interlocking plants have been installed and maintained by the Southern and its employes.

Thus the conduct of the parties throughout the years has expressed the intent of their agreement and their mutual understanding of it.

It appears that all parties concerned have recognized the facilities in question as jointly operated, that in these joint operations one Carrier is the operating Carrier and assumes the responsibility therefor and that the work involved is at its disposal. In this case it was N. and W. We see nothing in the Agreement which clearly prohibits such an arrangement.

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 there was no violation.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1957.