Award No. 8182
Docket No. SG-7081

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Northern Pacific Railway, that:

(a) The Carrier violated the Signalmen's Agreement, when, starting on or about June 15, 1953, it arranged for and/or permitted the performance of scope work on a track approaching an interlocking plant at Argo Tower, Seattle, Wash., by workers not covered by the agreement.

(b) Claimants A. J. Wonders, M. O. Lee, L. N. Schuler, B. N. Clement, E. T. Hays, S. D. Dodd, Jr., and H. D. Hofstater, be paid compensation for their proportionate share of the man-hours consumed by workers not covered in equipping the track with signaling facilities.

(c) The maintenance of these signaling facilities accrues to the Maintenance employes of this Carrier and that Signal Maintainer A. B. Snook be compensated for two (2) hours each work day that the maintenance of these signal facilities is assigned to other workers.

JOINT STATEMENT OF FACTS: Pursuant to a Carrier negotiated contract date June 5, 1912, an interlocking plant was installed at Argo Tower, Seattle Washington.

On July 22, 1953, an operative approach signal for the government of Northern Pacific trains on Northern Pacific right of way adjacent to Argo interlocker was placed in service.

This approach signal and its appurtenances was installed by workers not covered by the Northern Pacific-Signalmen's working agreement and subsequently was and is now maintained by workers not covered by the applicable agreement.

There is no dispute between the parties concerning the maintenance of the Argo interlocking home signals or the signaling facilities laying between the home signals.

"136.751 **Interlocking, manual.**—An arrangement of signals and signal appliances operated from an interlocking machine and so interconnected by means of mechanical and/or electric locking that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication."

"136.803 **Signal, approach.**—A roadway signal used to govern the approach to another signal and if operative so controlled that its indication furnishes advance information of the next signal."

Sections 136.307 and 136.310 appearing under the caption "Interlocking Standards" are particularly pertinent to this dispute. Section 136.307 provides that indication locking shall be provided for operating approach signals. Section 136.310 stipulates that a signal shall be provided on main track to govern the approach with the current of traffic to any home signal subject to certain exceptions. These sections clearly recognize that an approach signal is an integral part of an interlocking plan.

Attention is directed to Sections 136.750 and 136.751 defining an interlocking signal system, namely, an arrangement of signals with or without signal appliances which function in a prescribed manner.

The definition of an approach signal as prescribed in Section 136.803 is also significant. An approach signal is defined as a roadway signal used to govern the approach to another signal. The installation of an approach signal is dependent upon the existence of another signal. Consequently, the conclusion is inescapable that an approach signal is an integral part of another signal system.

The second question raised by the presentation of the claim covered by this docket is answered in the affirmative i.e., the approach signal for the interlocking plant at Argo is an integral part of that interlocking plant and therefore the installation and maintenance of this approach signal is subject to the June 5, 1912 contract.

The record in this docket amply sustains the conclusion that the Employes have not acquired a right either by agreement or by custom and practice to install and maintain the interlocking plant at Argo; that the approach signal constructed on July 22, 1953 is an integral part of the interlocking plant at Argo; that inasmuch as the Employes have not acquired a right either by agreement or by custom and practice to install and maintain the interlocking plant at Argo, it necessarily follows that the Employes have not acquired a right to install and maintain the approach signal installed on the Colorado Avenue line of the Northern Pacific Railway. Consequently, there has been no removal of work from the scope of the Northern Pacific Signalmen's Agreement by the installation and maintenance of the approach signal at Argo by Union Pacific Signal Department employes.

This claim should be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employes and is made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The claim involves the installation and maintenance of an approach signal to the Interlocking Plant at Argo, a point where the Respondent's tracks cross those of the Union Pacific Railroad.

The dispute is submitted to this Board as a Joint Submission from the parties hereto.

The Organization took the position that the installation and maintenance of the approach signal, should have been, and should hereafter be performed by employes covered by the effective agreement inasmuch as the work in question is clearly covered by the Scope Rule of such agreement. It was pointed out that the "approach" signal was located on Respondent's

right of way and had to do only with the movement of the Respondent's trains, being outside of the "home" signal limits, and thus not a part of the Argo Interlocking Plant.

The Respondent counters that the work in question can not be considered as coming within the Scope of the confronting agreement since the "approach" signal in question is a part of the Argo Interlocking system the installation and maintenance of which was provided for in a contract entered into in 1912 by predecessors of the Respondent Company and the Union Pacific Railroad, thus removing such work from the category of that which this Carrier can allocate.

The crux of this dispute centers around the question of whether or not the "approach" signal is an integral part of the Interlocking Plant. If it is the work in question properly is part of the subject matter of the Contract of 1912. If it is not we are of the opinion that such work comes within the purview of the Scope Rule of the confronting agreement.

We do not believe the work in question is covered by the Contract of 1912. The subject matter of this contract was the Interlocking Plant. The Rules, Standards and Instructions of the Bureau of Safety, Interstate Commerce Commission define the limits of an interlocking plant as the track between the opposing home signals of such plant.

The parties agree that the "approach" signal in question is not within the area of the opposing home signals.

In Award 3904 in considering a similar factual situation and disposing of an identical problem, we stated:

> "In the first place, an interlocking plant is ordinarily considered as that portion of the track of an interlocking plant between opposing home signals over which train movements are controlled by interlocking signals. We find nothing in that portion of the agreement which has been placed in evidence providing for the construction and maintenance of the interlocking plant that indicates an intent to vary this definition. * * *"
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> "* * * The Carrier asserts that it is necessary that the operation and maintenance of the operating distant signals be handled in conjunction with the interlocking plant. As to the operation this may be true, but as to maintenance it is not as is evidenced by the three months' maintenance by the signalmen of the Baltimore and Ohio Railroad which is not even claimed to have been unsuccessful. The agreement between the two railroads does not require the Pennsylvania Railroad to maintain the operating distant signals. It is limited to the interlocking plant.
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> "In cases of this nature, closely conflicting questions of fact and interpretation should be resolved, if possible, in favor of the employes of the railroad on whose property the work is to be done. Employes of one railroad should not be permitted to perform work on another railroad to the detriment of the latter's employes unless it can be clearly shown that they are entitled to do the work.
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> "We hold, consequently, that the signal maintenance work on the Baltimore and Ohio Railroad outside of the interlocking home signals at the Uhrichsville interlocking plant belongs to the signalmen of that road."

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 Carrier violated the effective Agreement.

AWARD

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1957.

DISSENT TO AWARD NO. 8182, DOCKET NO. SG-7081

The prime error in this Award is that the majority delves into an area wholly beyond the lawful authority of this Board under the Railway Labor Act. More precisely, the majority has taken it upon itself to interpret a contract between Carrier and the Union Pacific Railroad, lawful successor to an original contracting carrier.

The contracting Carriers had no dispute as to the meaning and coverage of their contract. They were in accord that the matter here involved fell within the coverage of that contract; yet the majority, contrary to the limited power vested in this Division, attempts to tell these Carriers that they were in error as to what their contract covers. We reject entirely any such infringement as this Award perpetrates upon the contract between these Carriers.

The majority relies on **Award 3904** as disposing of an identical problem. However, what we say above might have been equally pertinent to **Award 3904** except that in that case the contracting Carriers appear to have acted and construed their contract differently. The majority has seen fit to quote from the Opinion of Board in **Award 3904** but has deleted therefrom any reference to the fact that the members of the claiming craft on the Carrier involved had not only originally installed the signal involved, but has maintained same. The deleted sentence referred to reads, "The parties themselves appear to have had the same view of the matter when the new operating distant signals were installed and maintained for three months by the signalmen of the Baltimore and Ohio Railroad." Thus, by their actions in evidence in that case, the contracting Carriers gave their contract a different interpretation than is the case in the contract here.

Furthermore, the majority appears to accept the niceties of definitions as upholding its view. However, it chooses to ignore the fact that the Interstate Commerce Commission cited the Union Pacific Railroad, not the Repondent Carrier, for failure to install the involved signal as part of the interlocking plant. This Board may not presume that the Interstate Commerce Commission acted beyond matters within its power to control; but more important, this Board is without authority to rule on matters regulated by law. **First Division Awards 1123, 8832, 17325.**

For the reasons stated, we dissent.

/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp