

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway System that:

(a) The Carrier violated the Signalmen's Agreement when on or about March 12, 1951, it contracted, farmed out, removed, arranged or otherwise assigned work to persons who hold no seniority rights, and are not covered by that Agreement.

(b) Signal employees who were assigned to positions of Leading Signal Maintainer, and Signal Maintainers at the Argentine Hump Yard shall be compensated at their regular rate of pay on basis of time and one half for an amount of time equal to that required by the persons not covered by the Signalmen's Agreement to perform signal work assigned to such persons in violation of the Agreement; that each employee holding assigned positions at the Hump Yard during the period signal work was improperly assigned to persons not covered by the Signalmen's Agreement shall receive compensation for his proportionate share of the total time worked by such persons. (Carrier's File No. 132-118-4)

EMPLOYEES' STATEMENT OF FACTS: In April 1949 the Atchison, Topeka and Santa Fe Railway placed in service a car-retarder system at Argentine, Kansas, which was constructed, installed, and subsequently maintained by its Signal Department employees.

Among other appurtenances and appliances associated with this car-retarder system there are air-compressors which supply compressed-air for the purpose of operating the various functions of the car-retarder plant, such as car-retarder units and power operated track switches. Between the date of installation of this car-retarder system and the inception of this claim, employees covered by the Signalmen's Agreement were assigned to and held responsible for the maintenance and repairs of these air-compressors.

In the fall of 1950 the General Committee learned that the air-compressors were to be converted from manual to automatic control and that it was the Carrier's plan to use Shop Extension forces instead of Signal Department employees to effectuate the conversion. On the strength of this information,

The Carrier also wishes to direct attention to the fact that while signal employes, as a matter of operating convenience, were permitted to operate the compressor plant from May 1949 to June 1951 and also take care of minor running repairs to the plant, they at no time during this period or since have made any repairs to the electrical apparatus, which includes the 2300 volt electrical control panel. All electrical work at the compressor plant since its installation has been taken care of by electrical workers subject to the Shop Crafts' Agreement.

Briefly the Carrier's position in this dispute is that the Employees' claim is, for the following reasons, without any merit whatsoever and should either be dismissed or denied in its entirety:

1. Since the electrical workers subject to the Shop Crafts' Agreement, who would be affected by any decision made by the Board, were neither given due notice of the claim filed with the Board, nor an opportunity to appear and be heard, it is the Carrier's position that the claim is not properly before your honorable board and should be dismissed.
2. There is no agreement rule or understanding supporting the claim.
3. The work involved in this dispute is work which by agreement rule, tradition and by authority as set forth in General Manager's Circulars Nos. 14 and 188 (Carrier's Exhibits "A" and "B" attached), may properly be required of electrical workers subject to the Shop Crafts' Agreement.

While it should be clear under any and all circumstances that the claim in the instant dispute is entirely without merit or agreement support and should be either dismissed or denied; if for some unforeseeable reason it should be upheld by your honorable Board, the Carrier wishes to point out that the claim for the penalty rate of time and one-half is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules. See Awards 5195, 5261, 5419, 5437, 5548, 5708, 5764, 5929, 5967 and many others.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not Reproduced.)

OPINION OF BOARD: The Carrier's first car-retarder system was installed at Argentine, Kansas, in 1949. The electrically driven air compressors for the system, together with the associated control panel, conduit and wiring, were installed by electricians who are members of the Carrier's shop forces. The Petitioner did not dispute the allocation of this work to employes outside the Signalmen's Agreement, although it had ample reason to be aware of such allocation.

The compressor motors were started and stopped by manual control in the original installation. Signal Department employes were assigned to perform this duty. They also performed running maintenance on the compressors. In 1951, however, the Carrier assigned shop electricians to install a new electrical control panel for the purpose of changing the operation of the compressors from manual to automatic control. The basis of the

present claim is the contention that by virtue of this assignment the Carrier improperly removed work from the Signalmen's Agreement.

The work in question is not expressly set forth in the Scope Rule of the Agreement. The Petitioner relies, in part, on the fact that employes covered by its Agreement operated and performed running maintenance on the compressors. The disputed conversion of the controls was neither operation nor running maintenance, however. In the light of the noted lack of specific reference in the Scope Rule, and in view of the fact that the manual controls were originally installed by shop Electricians without protest from the Petitioner, we are unable to see how the conversion of these controls by the Electricians now becomes a violation of the Signalmen's Agreement. A denial award is warranted.

In view of our conclusion on the merits of this case it is unnecessary to comment on the third party issue raised by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereof, 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 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 28th day of March, 1958.