

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—(Western 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 Scope of the Agreement, effective February 1, 1946, between the Carrier and the Brotherhood when on or about July 17, 1950, it contracted, farmed out, assigned or otherwise allotted a portion of the work covered by said Scope to persons not covered by said Agreement.

(b) Claim by the Brotherhood in behalf of Signalmen P. R. Fritz, C. R. Rogers, and H. E. Norris, Assistant Signalmen M. L. Smith, E. L. Guthrie, R. P. Buis, J. M. Royse, and H. K. Smith, Signal Helpers E. N. Jaynes, H. L. Smith, F. L. Swan and W. L. Rush, all of whom held seniority rights on the Colorado Division, and held regular assigned positions in the Signal Gang which installed the Car Retarder System, for payment at their respective overtime rates of pay for a number of hours equivalent to the number of hours worked by the Company's Shop extension employees and the workers of the Hill Electrical Company, while those employees and workers performed the work of setting the air compressors, electric motors and electric fans, and connecting and wiring the circuits and controls, used in the Car Retarder System at the Pueblo, Colorado switching yard on the Colorado Division Seniority District of the Signal Department.

EMPLOYEES' STATEMENT OF FACTS: On September 1, 1950, the Atchison, Topeka and Santa Fe Railway placed a car retarder system in service at Pueblo, Colorado, which, with exception of the work involved in this dispute, was constructed, installed and subsequently maintained by its Signal Department employees; however, the exception expressed above does not apply to maintenance as the maintenance force was assigned to maintain the apparatus involved in this case.

Among other appurtenances and appliances associated with this car retarder system, there are air compressors operated by electric motors 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

(b) Carrier deemed it wise, for reasons of safety and efficiency to contract this work to a Company who could furnish the required specialized personnel and tools to cope with the intricate problems involved, with safety and efficiency.

(c) Had the work not been contracted to Hill Electric Company, it would have been performed by Carrier's Shop Extension employees (Sheet Metal Workers and Electricians) by reason of its specific inclusion in the classification rules for those employees in the Shop Crafts Agreement effective August 1, 1945. Those employees, by their action, concurred in the decision to contract this work.

In conclusion, Carrier states that:

(1) The instant claim should be dismissed because vitally interested third parties have not, to the Carrier's knowledge, been given notice of the pendency of this dispute. The Board cannot therefore render a valid award, in the absence of the third party notice required by the Railway Labor Act.

(2) All of the work herein involved belonged, by reason of its specific inclusion in the Classification Rules of another Agreement, to other employees covered by that Agreement.

(3) Carrier's judgment in contracting certain work to the Hill Electric Company was concurred in by the Carrier's Shop Extension employees, who would have normally performed it by contractual right, and is sustained by the principles of this Board that contracted work must be considered as a whole and not broken down into its component parts and that where special tools, equipment or skill is required, the work may be contracted.

Carrier respectfully requests the Board to proceed accordingly.

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

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier installed a car-retarder system at Pueblo, Colorado in 1950. Employees in the Signal Department installed the air reservoirs and the air lines to the retarders. Carrier's Shop Extension forces installed the two compressors and brought the air to a connection with the air reservoirs. An outside contractor was used to install and wire the two electric motors and the necessary fans to drive and cool the air compressors. Petitioner contends the work performed by the Shop force and the outside contractor is covered by the Scope Rule of the Signalmen's Agreement, and that Carrier's action in permitting other employees to perform such work was therefore in violation of the Agreement.

The subject car-retarder system at Pueblo was only the second such installation made by the Carrier. In making its first installation at Argentine, Kansas in 1949 the Carrier also assigned the compressor installation work to employees outside the Signalmen's Agreement. In this prior instance, however, the Carrier's shop Electricians performed the work which was given to an outside contractor at Pueblo. Nevertheless, the Petitioner did not protest the Carrier's failure to assign the installation of the compressors and associated equipment at Argentine to employees in the Signal Department. The subject Agreement also applied to this prior instance.

The Scope Rule contains no express reference to the work here in dispute. In view of this fact it is proper to examine the conduct of the parties under the Rule to ascertain their mutual intent. The Petitioner's acquiescence in the noted work assignment at Argentine is the only "past practice" in this respect. Under these circumstances we are unable to conclude that the work in question is within the exclusive jurisdiction of the Agreement.

Since we find no merit in the claim it is unnecessary to comment upon 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 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 28th day of March, 1958.