Award No. 8294
Docket No. SG-7977

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Clinchfield Railroad that:

(a) The Carrier violated the Scope Rule and other provisions of the current working agreement bearing effective date of July 1, 1950, between the Brotherhood and this Carrier when it arranged, contracted, farmed out, or otherwise permitted persons not covered by and who hold no seniority rights under said agreement to perform work on office equipment of communication facilities in the General Office Building at Erwin, Tennessee.

(b) The regular Signal and Communications Department employes affected by reason of the violation of the current working agreement be compensated at their proper rate of pay on the basis of time and one-half for an amount of time equivalent to that required by the outside workers to perform the diverted generally recognized work on communication facilities consisting of installing and maintaining communication facilities.

EMPLOYES' STATEMENT OF FACTS: Prior to August 22, 1954, there was in operation on this Carrier's property a Carrier-owned and operated telephone system throughout its general office and yard area at Erwin, Tennessee.

This telephone system was composed of 140 telephones, including extensions, and had been installed by employes of the Carrier. However, since July 1, 1950, the work of servicing and maintaining this system was assigned to employes of the Signal and Communication Department as a result of provisions covered by the Scope Rule of the agreement between the Carrier and this Brotherhood, which became effective on that date.

In addition to the Carrier-owned telephone system there were, prior to August 22, 1954, a number of telephones on this property which were connected directly with the Inter-Mountain Telephone Company office exchange at Erwin, Tennessee. This system was composed of 47 telephones, including extensions, and was installed and maintained by employes of the Inter-Mountain Telephone Company.

As a further example of the utter ridiculous position of the Organization, it might just as well claim the right to install and maintain card-punch and accounting machines which now form a part of Carrier's communication system. Carrier has a large installation of such equipment which can only be obtained on a rental basis, and as is well known by your Honorable Board, such equipment has always been provided only on a rental basis and maintained by the owner of that property.

The installation of additional telephone facilities by Inter-Mountain Telephone Company was merely an expansion of facilities being used on the property for many years. The expanded facilities are now, as at all times in the past, the property and maintenance responsibility of the utility. In installing this expanded system the Telephone Company was limited to the inter-communication facilities at Erwin, Tennessee, and the connection of such installation to our outside stations was established on the same basis as before—that is, employes represented by the complainant Organization handled connections to such outside offices and stations, and maintained the lines and telephones which are the property of the Carrier and are so connected.

In addition to the need existing for this expanded service in the interest of efficiency, Carrier desires to call to the attention of your Board that the installation of the additional city telephones was necessary because the Telephone Company would not and could not permit our equipment to be tied into their lines whereby any long-distance calls could be made over our lines in violation of its franchise, nor even had the utility been willing to permit such connection, it would have been in violation of Federal Tax laws concerning toll services.

In connection with this installation all handling of materials or work pertaining to this Carrier's equipment or property was performed by employes covered by the existing agreement. No part of such work was performed by any person who did not have seniority rights under the agreement between the Carrier and the Organization.

It is difficult for the Carrier to understand upon what basis claim for compensation at the rate of time and one-half, or any other rate, under paragraph (b) of the employes' statement of claim could be made.

No employe covered by the agreement was displaced as a result of the expansion by Inter-Mountain Telephone Company of its facilities. No reduction in force was made. Employes of Inter-Mountain Telephone Company did not even touch any of the equipment owned by the Carrier, and as has been previously stated, any work pertaining to the Carrier's property was performed by the Carrier's employes.

At all times during the effectiveness of the current agreement, as at present, all work pertaining to Carrier-owned communication facilities has been performed by employes represented by the Organization.

In the light of the whole record, Carrier has shown that the claim presented to your Honorable Board is wholly without merit. It should, in all respects, be denied, and the Carrier respectfully requests that you so hold.

All matters herein contained have been heretofore presented to the duly authorized representatives of the Organization and have been made a part of negotiations on the property.

OPINION OF BOARD: Prior to August 1954 Carrier had its own P.B.X. installation covering 100 or more telephones which furnished communication within its General Office Building at Erwin, Tennessee and with outside points on the property. This equipment was installed and maintained by Carrier's employes who have been represented by the Petitioner since 1950. There were also approximately 50 telephones in and about the General Office Building at Erwin which were owned, installed and maintained by

the Inter-Mountain Telephone Company. The latter phones were connected with the Erwin city exchange. This dispute arises because on or about August 22, 1954 Carrier had the telephone company install a private branch exchange and a number of additional telephones, all this equipment being rented from Inter-Mountain, with the result that some or all of the Carrier's own telephone equipment was removed from service. This removal was performed by Carrier's employes in the Signal and Communications Department. Employes of the telephone company have been maintaining the additional facilities which they installed.

The Petitioner contends Management violated the Agreement by removing therefrom work that is expressly set forth in the Scope Rule. The Rule refers to the installation and maintenance of communication facilities. The Carrier denies any violation. It states the disputed action was made necessary due to numerous expansions and a need to improve the service. Carrier further states the additional telephone service could not otherwise be obtained because the telephone company would not permit the Carrier's lines to be tied to the Inter-Mountain system through the city exchange, since this would permit violation of the Federal tax laws applying to long distance calls.

It is not disputed that there was a need to expand and improve the Carrier's telephone communication facilities. If Management had been free to choose between revising its own system and utilizing expanded Inter-Mountain facilities, there would be some merit to this claim. The Carrier was not free to make such a choice in meeting the needs of the service, however. The evidence indicates the Carrier took the only course of action that was possible and practicable to meet its requirements. Management had no power to assign its employes to install and maintain the additional Inter-Mountain facilities. Once these facilities were in place much or all of the Carrier-owned telephone equipment became superfluous. Thus there were no sound grounds for maintaining such equipment in use.

Under the confronting facts we find no violation of the subject Agreement. 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 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.