Award No. 9037
Docket No. SG-8645

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway (Chesapeake District) that:

> Signal Maintainers C. E. Butcher, Jack Carr, and E. Brown be each paid twenty (20) hours at the time and one-half rate to compensate for the time consumed by workers not covered by the agreement in performing scope work on the Presque Isle Docks car retarder starting on or about June 8, 1954. (Carrier's file SG-88.)

EMPLOYES' STATEMENT OF FACTS: The original car retarder at Presque Isle Docks, Toledo, Ohio, was installed about five years ago and has, since its installation, been maintained by the Carrier's Signal Department forces.

The unit involved in the instant case was installed by workers not covered by the Signalmen's Agreement.

This claim was initially filed with Signal Supervisor W. H. Miller on July 12, 1954, and was progressed in the usual manner on the property, without securing a satisfactory settlement.

There is an agreement between the parties to this dispute, identified as No. 5, which was reprinted November 16, 1953. This agreement, by reference, is made a part of the record in this case.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the Carrier violated the current Signalmen's Agreement covering signal employes when it diverted and assigned signal work heretofore performed by signal employes to workers not covered by the Signalmen's Agreement.

The Brotherhood holds that the installation and maintenance of the car retarder is signal work covered by the Scope Rule and other provisions of the

system between the docks and empty tracks to maintain such bona fide car retarder equipment, and no subsequent question has been raised by Longshoremen in this respect.

The question turns, therefore, on whose work it was to install and maintain the simple arrangement described above, consisting of one short bar made of old rail, bolted through holes in the running rail, with car springs for tension, which work was performed in 6 hours by four men on June 8, 1954, or in a total of 24 man hours.

The Carrier says that the nature of the installation giving rise to the instant claim was such that either Signalmen or Longshoremen could properly do the work from a performance standpoint, and the only point to be resolved is whose work it was under the agreements, to make such installation.

Those in charge at Presque Isle had Longshoremen do the work on the basis they considered the work of such nature that it belonged to Longshoremen under their rules, based on location and past allocation of work.

The Carrier submits that if further work of identical nature has to be done (though it is not anticipated that such work will ever have to be done again) it can, from an operating standpoint, be assigned to whichever craft may be determined by the Board to be the craft or class to which the work belongs.

The Carrier does call attention of the Board, however, to the matter of affording the Longshoremen notice of pendency of this claim and opportunity to be heard in connection therewith, in order that provisions of applicable regulations may be met. The representative of the Longshoremen to whom such notice may be addressed is:

Roy A. Denman, President,
Local No. 1768, International Brotherhood of Longshoremen,
3121 River Road,
Toledo, Ohio.

The Carrier submits there was no violation of the Signalmen's agreement in the handling of the work as described in detail in this response, based on rules of the two agreements and past allocation of work as described above, so that the claim should be denied in its entirety.

In concluding its Position, the Carrier calls attention that the Signalmen are confused with regard to the amount of time devoted to such work by Longshoremen. The records show that the total time was 24 hours, and not 60 hours as contended by the Signalmen.

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends in the present case that the Carrier be required to compensate Claimants for twenty (20) hours at the time and one-half rate for work assigned on their Presque Isle Docks to the Longshoremen which was work covered by the Signalmen's Agreement.

The Carrier contends that their original installation was made for coal-dumping machines by the Longshoremen in 1931. This same Longshoremen Organization have operated and maintained these coal dumping devices from the very beginning without question by any other craft.

In 1950, the Carrier installed a car-retarder system for controlling the movement of empty cars into classification yard tracks after they had been unloaded and released at the dumping machines. The Signalmen installed this car-retarder system and have maintained it. It was necessary to change the track grades as the cars would not retain a standing position when they were detached by Longshoremen at the beginning of the incline so the Carrier had the Longshoremen make a holding device by the use of a piece of rail against the running rail at the stopping point. Car springs were then used to thrust this piece of rail against the car wheels so that the cars would be held in place where left for the Longshoremen until they were to move to the dumping machine. This proved ineffective and the Carrier's track forces had to again change the grade of the track to bring about the desired results.

The Claimants base their claim on the contention that they installed a similar device between the retarder involved here and Carrier's Dumper No. 3, that it is obvious that this retarder was installed for the same purpose and therefore comes under the Signalmen's Agreement, having the same primary purpose. They quote Rule 1 of the Signalmen's Agreement which states:

> "This agreement covers rates of pay, hours of service, and working conditions of all employes engaged in the maintenance, repair, and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including such work in signal shop, and all other work generally recognized as signal work. It is understood the classifications provided by Rules 2, 3, 4, 5, and 6 include all the employes of the signal department performing the work described in this rule."

The Carrier introduces the Agreement between the Longshoremen who have been performing similar work on its Presque Isle Coal and Ore Docks for some twenty years. The Scope Rule of their Agreement specifically covers work on mechanical equipment on these coal and ore docks. The Carrier further contends that it applied the Agreement in the intended manner when it assigned the installation of the car-retarder system itself in 1950 to the Signalmen along with other holding devices which were not part of the dock equipment, but which were in the yard area covered by the Signalmen.

The Claimants "conceded that this inert car-retarder unit was somewhat different in design than a conventional car-retarder unit", but that the device in question served the same purpose as a conventional car-retarder unit insofar as retarding the movement of cars through it was concerned.

Longshoremen, who do all repair and maintenance work around the docks and dock area proper, were assigned this work. The instant claim arises because the Signalmen contend that men of their craft, instead of track forces and Longshoremen, should have drilled the holes in the track and applied the springs and connected the device. Signalmen did install a device in No. 5 track below No. 2 coal machine that is somewhat similar to that installed by Longshoremen near the pig at No. 3 coal machine during the previous year.

From the evidence in this case we are unable to classify the work performed as exclusive work covered under the Signalmen Agreement. The work performed in the installation of this device required no particular skill as would be necessary in the installation of an electric and pneumatic car-retarding system. The Claimants failed to meet the burden of proof requirements for us to sustain their claim that the work comes under Rule 1 of the Signalmen's Agreement.

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 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 of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.

DISSENT TO AWARD 9037, DOCKET SG-8645

The Scope Rule of the Parties' collective agreement has for a number of years prior to the incident giving rise to the instant dispute unequivocally covered the maintenance, repair and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, **car retarder systems,** etc.

In 1950 signal employes installed a car retarder system at Carrier's Presque Isle Dock facility. So far as can be determined from the record installation of the car retarder system by signal employes was never challenged. However, before the retarders were put into operation the Longshoremen laid claim to the maintenance of same. This issue was resolved when during Mediation proceedings the Longshoremen withdrew their contention that their members should maintain the newly installed car retarder equipment. Thus the signal employes not only installed the retarder system but have maintained it without question.

Subsequently, it was found that inert retarders were necessary to hold loaded cars at the three locations where the electric pushers hitch on to handle loaded cars to the car dumper. Signal employes installed these inert retarders and about this installation there is no question.

Still later on, following the incident involved in this dispute, another inert retarder was installed by signal employes and about this installation there is no question.

It was against this background that the majority erroneously found it convenient to hold that the work involved was not "exclusive work covered under the Signalmen Agreement." The majority likewise clearly erred in holding that the installation involved required no particular skill such as would be necessary in the installation of an electric and pneumatic car retarder system. The maintenance, repair and construction of **car retarder systems** as contemplated by the Scope Rule is not limited to either the degree of skill required or the type of system.

This Award does not represent mature thought on the part of the majority and I, therefore, dissent.

/s/ G. Orndorff