

Award No. 11787
Docket No. SG-10298

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago and Illinois Midland Railway Company:

(a) That the Carrier violated the Signalmen's Agreement, as amended, (particularly the Scope, Classification and Rule 3, and also the Memorandum of Understanding signed and made effective February 3, 1956) when it transferred or otherwise diverted generally recognized signal work covered by the Signalmen's Agreement to its Diesel Shop Electricians on September 23 and October 7, 1957.

(b) That Signal Foreman E. I. Ball and Leading Signalman-Inspector T. J. Fernandes now be allowed six (6) hours each for September 23, 1957, and six (6) hours each for October 7, 1957, at their respective overtime rates of pay, which is equivalent to the exact amount of hours that Diesel Shop Electricians W. J. Maurer and C. W. Maurer were compensated for the signal work they performed on the dates specified herein. [Carrier's File No. 013.294, Case No. MP-BRSA-1, CE No. 1]

EMPLOYES' STATEMENT OF FACTS: Since the effective date of the current agreement, employes of this Carrier's Signal and Communications Departments covered by the Signalmen's Agreement have with no exceptions, performed all of the signal, communication, telegraph, telephone, radio, electrical, and other types of work outside of the buildings in the shop areas at Taylorville and Springfield, Illinois, as well as all wayside work of this nature throughout this Carrier's property. In addition to the above-cited work outside of the buildings in the shop areas, employes covered by the Signalmen's Agreement also performed a considerable amount of the electrical work inside of the buildings in the shop areas, as well as all of the communication, telegraph, telephone, and signal work inside as well as outside of the buildings in the shop areas.

The Carrier had received protests from its Shop Electricians at Taylorville, Illinois, account of signal employes performing certain electrical work

(b) The February 3, 1956 Memorandum of Understanding (EXHIBIT "A"), particularly paragraph 2(a), (b) and (c) does not grant this work to signalmen.

3. The penalty of 6 hours each for two days to Signal Foreman Ball and Leading Signal-Inspector Fernandes, at their respective overtime rates of pay, is not provided by any rule of the signalmen's agreement. Ball and Fernandes worked on each of the dates in this claim and have not been deprived of working their assignments; neither of them suffered a loss. Your Board has on numerous occasions found (when a violation has been determined) that the pro-rata rate is all that is warranted where no work is performed. None was performed here by the claimants and consequently a punitive penalty cannot be sustained under any circumstances. See Awards of the Third Division, NRAB as follows: 6160, 6664, 6702, 7207, 7242, 7255, 7288, 7309, 7316, 7388, 7816, 7858 and 7915.

4. The employes represented by the agreement with the Shop Crafts electricians (INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS) are interested parties to this dispute and in accordance with Section 3, First (j) of the Railway Labor Act, should be notified by the Third Division, NRAB, and afforded an opportunity to protect their interests. See Awards 6482, 6483, 6484, 6485, 6680, 6681, 6682, 6683, 6696, 7975, 8023, 8050 and 8105.

CONCLUSION

In view of the failure of the representatives of the two crafts of employes here involved to mutually agree on the jurisdiction of work both before and after it was done, the question now before your Division is whether the installation of wiring and lighting fixtures in the diesel shed in the newly established Taylorville Shops area belongs to the employes represented by the BRSA or the IBEW. Because the carrier could not delay completion of the work until the representatives of the two groups of employes could agree upon who should perform it, the carrier interpreted the classification rules of the respective agreements and the tri-party understanding of February 3, 1956 as awarding the work to the Shop Crafts Electricians.

The carrier therefore respectfully requests the other interested party to this dispute, the IBEW, be given notice in accordance with RLA Section 3, First (j) and that your Board deny the claim in its entirety.

All data herein submitted has been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: At all times material herein, Petitioner and International Brotherhood of Electrical Workers, hereafter referred to as IBEW, each had a collective bargaining agreement with Carrier.

Petitioner, IBEW and Carrier entered into the following "Memorandum of Understanding," herein called the Memorandum:

"It is hereby agreed that effective February 3, 1956 the following shall apply:

1. Shop Crafts Electricians will take care of the following:

a. Electrical work inside all buildings in the Springfield Shops area including the yard office and the Springfield station and including underground power cables between such buildings.

b. Electrical work inside all buildings in the Taylorville Shops area including the Taylorville station and including underground power cables between such buildings.

2. Signalmen will take care of the following:

a. The installation and maintenance of underground cables from all pole lines to but not including the inside of buildings within the Springfield and Taylorville Shops area.

b. The installation and maintenance of overhead service lines up to but not including the inside of buildings within the Springfield and Taylorville Shops area.

c. Service requirements outside the Springfield and Taylorville Shops areas as in the past.

3. All electrical service furnished from pole lines before entering buildings will be installed and maintained by Signalmen. All power sources leaving buildings, but not including any pole line work, will be installed and maintained by electricians."

We are not concerned with what differences occasioned the negotiations which led to the Memorandum, for as we said in Award No. 6856:

"... It is presumed that all of the contentions and arguments of the parties are merged in the written agreement. A party is not permitted to go behind his written agreement and offer special knowledge on the intent of plain provisions. It is conclusively presumed that all such matters were considered and incorporated in or left out of the agreement to the extent that the written contract shows. The integrity of written agreements requires that they be so construed. The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible . . ."

Since the Memorandum is a bilateral contract, executed by the parties thereto subsequent to the effective dates of the existing collective bargaining agreements, it, to its extent, prevails over the scope provision of each of the agreements.

Taylorville, Illinois, is the southernmost terminus of Carrier's line of road.

During November 1955 Carrier changed from steam to diesel power and abandoned its Taylorville roundhouse and steam locomotive servicing facilities.

It stationed one diesel locomotive on a track adjacent to its Taylorville freight station where it was tied up for servicing and maintenance.

In 1957, Carrier constructed a shed over the track to shelter the diesel while it was being serviced, repaired or when not in use. After discussion with Petitioner and IBEW, Carrier assigned the electrical installation work inside the shed to IBEW. Each of the Organizations had laid claim to the work on the basis of their respective collective bargaining agreement and the Memorandum. IBEW cited paragraph 1(b) of the Memorandum as being the controlling provision; Petitioner cited paragraph 2(c).

The question to be resolved is whether the shed involved is in the "Taylorville Shops area" within the meaning of that descriptive phrase as employed in the Memorandum. If the answer to the question is found to be affirmative Petitioner concedes that the work "clearly belongs to the Electricians under Part 1(b) of the Memorandum." But, Petitioner contends that the shed "is not included within the area the parties had in mind when they adopted the phrase 'Taylorville Shops area;'" therefore, the work "belongs to Claimants by virtue of Part 2(c) of the Memorandum."

Petitioner argues that it was its understanding that the phrase was limited to the shops area as it existed as of the date of execution of the Memorandum; and, it was not contemplated that the phrase would encompass later erected shop buildings in a different location at Taylorville. But, this argument finds no support in the Memorandum. Had the parties to the Memorandum intended such a circumscribed application of the phrase we must assume that they would have expressed it by words of limitation in the Memorandum. We find none. As we have so often said we cannot supply, by decision, that which the parties have failed to include in a written agreement.

We have read the Memorandum many times and are satisfied that the sense of paragraph 1(b) is that it includes all shop buildings at Taylorville. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 or Memorandum of Understanding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.

**DISSENT TO AWARD 11787
DOCKET SG-10298**

This Award destroys rather than interprets a portion of the Memorandum of Understanding involved; therefore, it is in error.

Admittedly, the Signalmen are excluded from work inside buildings within the "Taylorville Shops area", however, the majority has broadened the language so as to include "all Shop buildings at Taylorville" thereby setting the stage for complete frustration of the Memorandum of Understanding so far as Taylorville is concerned by simply calling buildings in the vicinity of Taylorville, irrespective of location, Shop buildings.

Applying the principle used by the majority it is also reasonable to assume that if the parties to the Memorandum of Understanding intended that Signalmen are excluded from work within all Shop buildings at Taylorville, they would have so stated.

I certainly have no quarrel with the principles stated in Award 6856 cited by the majority, however, I emphatically disagree with the manner in which the majority used those principles in this case.

The majority committed further error when it refused to consider what the Employes had to say leading up to the negotiations of the Memorandum of Understanding. Apparently, Carrier's side of the story was not given similar treatment.

The function of the Board is to interpret agreements as they are written. In this case the majority has seen fit to rewrite an agreement; therefore, I dissent.

**G. Orndorff
Labor Member**