

Award No. 12300

Docket No. SG-10128

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al.:

(a) That the Carrier violated and continues to violate the current Signalmen's Agreement when it permitted and/or required employes other than those covered by the current Signalmen's Agreement to perform recognized signal work on the car retarders at or near Spartansburg, S. C.

(b) That the Carrier now compensate Mr. J. F. Shinta, Signal Maintainer, Spartansburg, S. C., and Mr. W. K. Day, Assistant Signal Maintainer, Spartansburg, S. C., at their respective overtime rates of pay for all time worked by employes not covered and who hold no seniority and other rights under the Signalmen's Agreement, in performing signal work on the car retarders at Haynes Yard.

(c) That this claim be retroactive 60 days from December 18, 1956, or effective October 18, 1956, and applicable to Messrs. Shinta and Day, and/or other signal employes who may be assigned to the signal maintenance territory in lieu of those now assigned, and said claim to continue until the proper correction is made and the violation is discontinued.

(d) That the Carrier be required to furnish records of the time worked on the car retarders since October 18, 1956, in order to dispose of the claim and determine the amount due the claimants.

(e) That the Carrier be required to restore to signal employes that signal work on car retarders at Haynes Yard now performed by employes not covered and who hold no rights under the Signalmen's Agreement, together with all other work generally recognized as signal work at Haynes Yard. [Carrier's File SG-10440]

EMPLOYES' STATEMENT OF FACTS: During the first part of 1965, the Carrier installed a small car retarder system in the Haynes car shop yards at Spartansburg, S. C. The car retarder system was composed of four power-operated switch machines, four car retarders, one small signal relay

Agreement of August 21, 1954, has not been complied with by the Brotherhood. In these circumstances, the claim is barred, and the Board has no jurisdiction over it.

(b) In event the Board assumes jurisdiction, the giving of notice by the Third Division of the Adjustment Board to shop craft employes is not only required by Section 3 First (j) of the Railway Labor Act, but is a jurisdictional prerequisite to the exercise of the statutory power conferred upon the Board by law; therefore, it is obligated by law to give such notice to shop craft employes before attempting to pass on the merits of the claim which the Brotherhood here attempts to assert.

(c) The effective Agreement has not been violated, as alleged.

(d) Prosecution of the claim constitutes nothing more than a demand that the Adjustment Board establish new rules and conditions of employment by an award, a step which the Board is without authority to take.

Claim, being barred, should be dismissed by the Board for want of jurisdiction. If, despite this fact, though, the Board assumes jurisdiction, it is then obligated by law to give shop craft employes notice of all hearings, that they may be heard as required by Section 3 First (j) of the Railway Labor Act. If, after notice, the Board assumes jurisdiction and considers the merits, it cannot do other than make a denial award, because to do otherwise would be contrary to the specific terms of the Agreement in evidence.

(Exhibits not reproduced.)

OPINION OF BOARD: During the early part of 1956 Carrier caused to be constructed and installed in its Haynes Car Repair Shop yards certain electrically operated devices and equipment which the Organization contends is a "Car Retarder System."

Complete factual descriptions of said alleged "System" with respect to its size, location and use are set forth in detail in the respective Statements of Fact and Positions of the Parties and will, therefore, not be repeated herein.

The controlling question is whether the alleged "Car Retarder System" so installed is a "Car Retarder System" within the meaning of that term as it is used in the Scope Rule. We believe that it is. The pertinent parts of said Rule are set forth below.

"Scope—Rule 1: (Revised—effective October 23, 1953)

This agreement covers the rules, rates of pay, hours of service and working conditions of employes hereinafter enumerated in Article II—Classification.

Signal work shall include the construction, installation, maintenance and repair of signals, either in signal shops, signal store-rooms or in the field; signal work on generally recognized signal systems, wayside train stop and wayside train control equipment; generally recognized signal work on interlocking plants, automatic or manual electrically operated highway crossing protective devices and their appurtenances, car retarder system, buffer type spring switch operating mechanisms, as well as all other work generally recognized as signal work."

It should be noted that the Rule contains no language limiting or restricting "Car Retarder Systems" with respect to their size, their location or the purpose for which they must or may be used. It is our duty to interpret the Rule as it is written. We do not have the privilege or right to add restrictions thereto. See Awards 6007 and 6828, Messmore.

The question as to whether the work of maintaining said "system" after its installation is "generally accepted signal work—on Car Retarder Systems," must be answered in the affirmative. We have also concluded that the Shop Craft employees who have been permitted to maintain said "system" since its installation are not necessary parties to this dispute. The Organization to which they belong was notified of the pendency of the dispute and filed its response thereto. Therefore, the question as to the necessity for giving notice is moot.

The contention that the claim is vague and indefinite and that it is barred under Article V of the August, 1954 Agreement cannot be sustained. This Board has on many occasions held that the failure to name Claimants is not fatal to the claim so long as the Claimants are readily identifiable. See Awards 4821, 5107, 8377, 8526, 9248. Claimants here are specifically named, and their successors, if any, can be readily identified by Carrier's records.

We have carefully examined the record, including photographs, diagram and other pictorial information furnished us, and have concluded that the claim should be allowed in all respects as filed, except that the "overtime rates" claimed to be applicable as stated in Paragraph (b) of the Statement of Claim, should be reduced to the "straight time rates," in accordance with the holding in Award 11333, and cases cited therein.

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 violated the Agreement.

AWARD

The claim should be allowed as modified.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1964.

DISSENT OF CARRIER MEMBERS TO AWARD No. 12300,
DOCKET No. SG-10128

The Scope Rule of the agreement in evidence provides that "signal work

shall include * * * generally recognized signal work on * * * car retarder systems." Thus under the agreement the only work on car retarder systems which signalmen have a contract right to perform is "generally recognized signal work."

For freight cars undergoing repairs to be properly routed from the track under the prime paint shed into one of the four main car repair tracks extending into and through the freight car repair shop at Hayne, S. C., electrically operated and controlled switches controlled from the prime paint shed were installed at the entrance of each of the four main freight car repair tracks. To stop and hold cars and prevent them from running into the main freight car repair shop, electrically operated and controlled mechanisms (commonly referred to as car retarders) were installed in each of the four freight car repair tracks 48 feet from entrances to the main freight car repair shop. These mechanisms stop and hold cars until they can be safely moved by a cable and winch arrangement into the main freight car repair shop for repairs. They also serve as safety devices in that they prevent cars from rolling into the shop where carmen and others are working. The mechanisms definitely do not retard the movement of cars.

There is no evidence that there is signal work or generally recognized signal work to perform, or that there is a car retarder system. Nor is there any evidence that there is a classification yard at Hayne Car Shop. In fact the evidence is to the contrary. Despite all this, the referee, for some unexplained reason, concluded that "certain electrically operated devices and equipment" installed at Hayne car repair shop "is a 'Car Retarder System' within the meaning of that term as it is used in the Scope Rule," and that "the work of maintaining said 'system' after its installation is 'generally accepted signal work—on Car Retarder Systems.'"

The agreement in evidence does not refer to or embrace "generally accepted" work of any kind, nor does it refer to or embrace "generally accepted signal work." It specifically refers to and embraces "generally recognized signal work on * * * car retarder systems." For work to be "generally recognized signal work on * * * car retarder systems" within the meaning of this language as used in the Scope Rule, it must be signal work of the character heretofore performed on car retarder systems on this Carrier's property by signal employes. There is no evidence that any such work has heretofore been performed by signal employes on this Carrier's property on "electrically operated devices and equipment" installed and used to stop and hold cars. Nor is there any evidence that any such work has been recognized by the parties as "generally recognized signal work on * * * car retarder systems." The language "generally recognized signal work on * * * car retarder systems" was never intended to cover, and does not cover, work on mechanisms such as those installed and used at Hayne Car Shop to stop and hold cars awaiting repairs.

The theory that an installation containing certain "electrically operated devices and equipment" of the general type sometimes used as part of a car retarder system in a classification yard automatically creates "generally recognized signal work on * * * car retarder systems" when used at a shop or elsewhere was discounted in principle by the Board in Third Division Awards 11162, 11369 and 11612 which denied claims of signal employes on this Carrier. The referee should have followed the principles of those awards.

Factually the electrically operated and controlled mechanisms installed at Hayne Car Shop do not constitute a "car retarder system." "Car retarder

systems" are installed only in classification yards where cars are humped and assembled into cuts of cars or into trains. There is no classification yard at Hayne. Factually cars are not retarded. They are stopped and held. There is definitely no "generally recognized signal work on * * * car retarder systems" to be performed at Hayne Car Shop.

Award 12300 is contrary to the agreement and other evidence of record and is therefore null and void. For these reasons we dissent.

/s/ P. C. Carter

/s/ D. S. Dugan

/s/ W. H. Castle

/s/ T. F. Strunck

/s/ G. C. White

**ANSWER TO DISSENT OF CARRIER MEMBERS TO
AWARD No. 12300, DOCKET No. SG-10128**

The foregoing Dissent is nothing more than a tiresome play on words plus a rehash of some of the clever arguments by and on behalf of Carrier which were properly rejected by the Division.

The Board placed things in proper perspective and correctly applied the rules to the facts contained in the record.

Congress did not provide losers with a means of setting aside awards of the Board; therefore, the Dissenters' assertion that Award 12300 is null and void is meaningless.

/s/ G. Orndorff

G. Orndorff
Labor Member