

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

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

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when on May 25, 1959, it unilaterally removed from the Signalmen's Agreement the signal work of maintaining and repairing signal appurtenances (specifically, air compressors at Presque Isle, Ohio) and caused signal work involved to be performed by other than employees covered by the Signalmen's Agreement.

(b) The signal work covered by the Scope Rule and other provisions of the Signalmen's Agreement, as defined in part (a) of this claim, be restored to the Signal Department employees holding seniority rights under the Signalmen's Agreement.

(c) Signal Maintainer E. D. Brown and Assistant Signal Maintainer O. M. Pierce, regular assignees to the Presque Isle signal maintenance territory, be proportionately compensated at their respective overtime rates for all time consumed by employees or others who hold no seniority rights under the current Signalmen's Agreement, in maintaining and repairing the appurtenances as defined in part (a) of this claim. [Carrier's File: SG-142.]

EMPLOYEES' STATEMENT OF FACTS: The Carrier's signal forces installed a car retarder system at Presque Isle, Ohio, in 1950. Installation of the car retarder system by signal employees was not challenged. However, before the retarders were put into operation, the Longshoremens laid claim to the maintenance thereof. The issue was resolved when during mediation proceedings (Case No. A-3365) the Longshoremens withdrew their contention that their members should maintain the newly installed car retarder equipment.

CONCLUSIONS

The Carrier has shown that the work in question has been properly allocated to longshoremen under their agreement, and the claim of the Signalmen in this case should be denied in its entirety.

In concluding, however, attention is called to the fact that the claim in this case cuts across reality in that it asks that the Signal Maintainer and his Assistant be paid at overtime rates for any time longshoremen have devoted to the compressor work in question.

Longshoremen have done all of the compressor inspection and maintenance work as a part of their regular assignments, and if signalmen instead of longshoremen had been assigned to such work they would not have been paid overtime for performing such work, as the entire disputed work area is one of insignificance from a time standpoint, either craft being able to take care of it as a minor incidental part of their routine work.

Thus, Section (c) of the claim in this case is unreasonable and excessive, independent of the merits of the claims in Sections (a) and (b), and this should be given appropriate consideration by the Board in its determinations.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the opinion of this Board that the Agreement between the parties to this dispute has not been violated.

The scope of the current Signalmen's Agreement provides:

"RULE 1 — SCOPE

This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair, and construction . . . car retarder systems, . . ."

Pursuant to this Agreement, Signalmen installed an electro pneumatic car retarder system at Presque Isle, Ohio, in 1950. At that time no new compressors were installed; rather, the air supply for operating the retarders was taken from the general dock air supply by making pipe connections thereto. It is undenied that Longshoremen maintained the compressors which provide the general dock air supply before the car retarder system was installed in 1950 and have done so since that time.

In 1958, the Carrier built an additional coal dumper facility adjacent to the three already in use at Presque Isle. This necessitated the construction of a new car retarder system. Connections could not be made to the dock air supply for this new car retarder system. It was, therefore, necessary to construct a compressor house and install compressor equipment therein to supply air exclusively for the new car retarder operation. It is agreed that Signalmen installed the car retarders in 1958, but a dispute of fact arises as to who installed the compressors in 1958. Carrier asserts that some were installed by Longshoremen, who have since maintained them. Employees assert that they were installed by Signalmen, who also maintained them until May of 1959.

The Employes contend that the compressors installed in 1958 are a part of the "car retarder system" and therefore within the scope of their agreement. However, Carrier contends that the term "car retarder system" is ambiguous insofar as it is alleged to include the compressors. It further contends that in such case the Board must look to extraneous evidence to ascertain the intent of parties in using the term. They cite the long standing past practice, whereby the Longshoremen have maintained the compressors at Presque Isle to show that compressors were not intended by the parties to be a part of the "car retarder system." Further, they cite Item 11 of the Longshoremen's Agreement, wherein Carrier expressly contracted the repair and maintenance of air compressors to the Longshoremen, as follows:

"(11) Employes covered hereby will take care of the maintenance of motors and their controls on air compressors and pumps on the docks and on air compressors located in the old water treating plant. They will also do the maintenance work on the air compressor at Millard Avenue which they have done in the past."

They contend that the above evidence clearly reflects an intent to contract such disputed work to the Longshoremen and assert that no such intent is set forth in the Signalmen's Agreement. It is, therefore, the opinion of the Board that it was not the intention of the parties to include the compressors at Presque Isle, Ohio, within the term "car retarder system." It, therefore, follows that the Signalmen do not have the exclusive right to maintain such compressors.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1964.

LABOR MEMBER'S DISSENT TO AWARD NO. 12411,
DOCKET NO. SG-12027

In Award 9210, interpreting the instant Scope Rule, we said:

" * * * The record here shows that the Agreement before us provides in the Scope Rule for the maintenance, repair and construction of signals, ' * * * car retarder systems, * * *.' While the Scope Rule itself is general in character, we cannot agree that such rule is ambiguous or that past practice may lessen the effectiveness of a provision of the Agreement where there are no exceptions or modifications contained in the Rule involved.

We must conclude that the claim as filed here was proper, as provided by the provisions of the Scope Rule. * * * No exception is contained in the Scope Rule covering such installation as urged by Carrier. The installation of the motors and compressors here involved is an integral part of the construction and operation of the car retarder system as described and provided in the Scope Rule."

Award No. 9210 is not palpably wrong.

Now, just four years later, the majority, consisting of the Carrier Members and Referee, find those Scope Rule words ambiguous, not reserving the disputed compressors to Signalmen.

Award No. 12411 has accomplished nothing but to add confusion to an already too confused and inconsistent Board; it is a palpable error; therefore, I dissent.

W. W. Altus