

Award No. 12925

Docket No. SG-11967

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when, beginning on or about March 30, 1959, it required and/or permitted employes of the Bankhead Welding Service, Inc., who hold no seniority or other rights under the Signalmen's Agreement, to perform signal work on the car retarders at Inman Yard, Atlanta, Georgia.

(b) The Carrier should now be required to compensate Messrs. James L. Carter, J. W. Gibson, J. M. Payne, E. G. Richardson, R. W. Linn, and other Signal Maintainers and Assistant Maintainers who are assigned to and working a shift or part of a shift during the period that persons not covered by the Signalmen's Agreement are used to perform signal work on car retarders within the spread of the regular assigned working hours of those involved, at their respective rates of pay on a proportionate basis for all time each day that the Bankhead Welding Service employes are used to perform any type of recognized signal work. Claim to begin February 19, 1959, or on the first day thereafter that employes of the Bankhead Welding Service performed signal work on the car retarders, and continue thereafter so long as persons not covered by the Signalmen's Agreement are permitted to perform signal work. Claims to be based on eight (8) hours per day for each day that each Bankhead Welding Service employe was or is used to perform any signal work, or a correct record of man-hours involved agreeable to those concerned, until proper corrections are made and the violation discontinued.

EMPLOYEES' STATEMENT OF FACTS: Prior to the time this dispute arose, the Carrier placed a car retarder system in service at Inman Yard, Atlanta, Georgia. The large car retarders were installed by the General Railway Signal Company. When part of the retarder system was placed in

dictate a like holding here.'

The same principle was applied in denying the claim in Award 13554, BRT vs K&IT, the same parties as here.

The excerpted portion of the findings from Award 18923 is applicable; the claim is denied without passing upon the merits."

On the basis of the above awards, there is ample justification for a denial award due to the simple fact that all the named claimants were on duty and under pay when the here complained of work was performed.

CONCLUSION

Carrier respectfully submits it has shown that:

(a) the claim is vague and indefinite and should be dismissed by the Board for want of jurisdiction;

(b) the Signalmen's Agreement was not violated, as alleged, and the claim and demand are not supported by it;

(c) the named claimants were not qualified to do the involved work; in fact, they have so conceded—see Exhibits B-4 and B-5, attached hereto and made a part hereof;

(d) prior Board awards support Carrier's action in contracting the special work here involved;

(e) prior Board awards have denied claims where, as here, claimants were on duty and under pay; therefore there is ample justification for a denial award for this one reason if for no other, and there are others.

The claim and demand which the Brotherhood here attempts to assert should be dismissed by the Board for want of jurisdiction because it is vague and indefinite. However, if, despite this fact, the Board assumes jurisdiction, it cannot do other than make a denial award for an award of any other type would be contrary to the terms of the agreement in evidence.

(Exhibits not reproduced.)

OPINION OF BOARD: There is a fundamental disagreement between the Petitioner and the Carrier as to whether or not the devices, upon which work was performed by outside Contractors were part of the car retarder system. Throughout the record, both factions continually refer to them as "small car retarders" in contradistinction to the "large car retarders", concerning which there is no dispute. The latter are located in the classification yard and it is mutually agreed that at least they form a substantial part of the car retarder system. The so called "small car retarders" are located a considerable distance from the "large car retarders" and are not under the control of an operator as the latter are. It appears from a review of the record that these "small car retarders", were designed by the Carrier's signal, electrical and maintenance of way officers, and actually constructed by the railway shop forces. The Carrier maintains that these devices were designed not to retard cars but to stop and hold them. After one such small car retarder was built, additional retarders were manufactured by an independent

contractor in accordance with the railway company's plans and specifications. A total of fifty-six of these small retarders were installed in the south end of the receiving yard in Atlanta and Carrier alleges were the first and only ones of this type in use on any railroad. They were lightly constructed and over a period of time, it became obvious that work would be required on them so that they could more adequately withstand the wear and tear to which they were being subjected. The Carrier contends that such work involved structural defects rather than ordinary maintenance work, a consequence of which was that these retarders required a substantial amount of heavy electric welding. The Carrier further contends that it did not then, nor does it now have in its possession any electric welding equipment suitable for use in performing the required work. It further alleges that it did not then, nor does it now have the trained personnel qualified to do this type of welding. In view of the foregoing, the Carrier engaged the services of an outside welding company to do the required work.

There are two basic questions to be considered in this case, one being whether the so called "small retarders" are a part of the car retarder system and the second one being, if they are part of the car retarder system, whether the work performed was work generally recognized as signal work.

We take cognizance of Award 12300. That case is similar to, but distinguishable from this case on a factual basis. Although as stated before in this opinion, both the Carrier and the Organization have persistently referred to the devices in question as car retarders, a review of the available evidence convinces us that this is a misnomer. An effort was made by the Carrier to have these devices called car stoppers rather than retarders, because that is precisely what their function is, to stop and hold, not to retard. This is in our judgment the crucial point determinative of the final outcome of this case. The Petitioner has the burden of proving his case, but we can find no evidence in this record of probative value, which would lead us to any conclusion, other than that these devices are stoppers, not retarders. By way of addendum we feel constrained to say that even if we were to agree with the Petitioner that these devices were part of the car retarder system, we would have great difficulty to sustain their position that the work performed was work "generally recognized as signal work". It is beyond dispute that the Petitioner always has the burden of proving his case by a preponderance of evidence. He has failed to present such a preponderance of evidence on these issues. We therefore deny the claim.

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 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 28th day of September, 1964.

DISSENT TO AWARD No. 12925, DOCKET SG-11967

The Majority says that:

"There are two basic questions to be considered in this case, one being whether the so-called 'small retarders' are part of the car retarder system and the second one being, if they are part of the car retarder system, whether the work performed was work generally recognized as signal work."

Award No. 12300, involving the same parties and agreement, is then recognized and declared distinguishable, but not declared to be in error.

The Majority's attempt to distinguish Award No. 12300 is distinction without difference. Likewise, Award No. 12300 answers the Majority's version of the questions posed to the Board.

Award 12925 is an undisguised maneuver to relieve the respondent carrier from the terms of its agreement with its employees, and a disregarding of our often repeated holding that we are to follow our precedent awards unless palpably wrong.

Award 12925 is in error; therefore, I dissent.

W. W. Altus
Labor Member 10/19/64