Award No. 13285

Docket No. SG-12814

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad that:

(a) The Carrier violated the current Signalmens' Agreement, particularly the Scope, when it required signal employes to remove signal locks from switch boxes on turn table at Dante Yard, Virginia, on April 20, 1960; then required and/or permitted other than signal employes to perform work on April 21, 1960, in connection with repairs to motors or electrical wiring that had been installed on this turn table by signal employes.

(b) The Carrier should now be required to compensate SC&E Maintainer Frank T. Richmond, Jr., St. Paul, Virginia, for a call of two (2) hours and forty (40) minutes at his overtime rate of $3.885 per hour for work performed on his assigned territory on April 21, 1960, by other than signal employes.

(c) The Carrier should also be required to instruct signal employes to put signal locks back on this equipment for protection, and to maintain this equipment as they have in the past. [Carrier's File: Signalmen]

EMPLOYES' STATEMENT OF FACTS: About 1950, Signal, Communications and Electrical (SC&E) employes wired all of the shop at Dante Yard, Virginia, and from that time until the date upon which the instant claim is based, SC&E employes made all necessary repairs pertaining to electrical wiring at Dante, including the wiring in houses and the turn table. The Equipment and buildings which the SC&E employes have always maintained have been protected by "signal" locks for which SC&E employes have been furnished a key.

On or about April 20, 1960, the Carrier required one of its SC&E employes to remove signal locks from switch boxes on turn table at Dante Yard so that Electricians who are not covered by or classified in the SC&E Agreement could

governed. In that case Signalmen electricians covered by agreement with the Brotherhood of Railroad Signalmen had wired a new line-of-road building being constructed by the Maintenance of Way Department for the Maintenance of Equipment Department. The Carrier's position in that case was that the work involved was line-of-road work reserved to Signalmen for the reason that the building did not become a part of the Maintenance of Equipment Department until it was completed by the Maintenance of Way Department and turned over to the Maintenance of Equipment Department. The Second Division, with Referee Richard F. Mitchell, rendered Award 3750 denying the claim of System Federation No. 44 and said, in part: "The work was not performed in the Maintenance of Equipment Department * * * The building was not in possession of the Maintenance of Equipment Department at the time the work was performed. The work was line of road construction of a new building. There was no violation of the current agreement and the claim must be denied."

The situation in this dispute is identical except that the shoe is on the other foot.

The work involved in this dispute was performed in the Maintenance of Equipment Department by electricians covered by agreement with System Federation No. 44, to whom such work is reserved by their agreement.

Signalmen covered by agreement with the Brotherhood of Railroad Signalmen were not entitled to perform the work for the simple reason that their agreement specifically excludes them from it.

CONCLUSION

Carrier respectfully submits that the claim is entirely without merit; that it finds no support in the rules of the current and controlling agreement, and we request the Board to so find and deny the claim.

OPINION OF BOARD: Brotherhood claims Carrier violated the Scope Rule of the Agreement when it assigned the involved work to an electrician of the Maintenance of Equipment Department who is covered by the Electrician's Agreement. The involved work was the repair of motors and/or electrical wiring on a turn table at Dante Yard.

The Electrician's Agreement is named in the Scope Rule of the Brotherhood's Agreement in reciting an exception to the reservation of work there set forth:

> "* * * construction, installation, repair, reconditioning, dismantling, inspecting, testing and maintenance, * * * of * * * All * * * line of road electrical facilities but not including work in the Maintenance of Equipment Department covered by Electrician's agreement rules, * * * "

Carrier argues that the involved work was Maintenance of Equipment Department work covered by the rules in the Electrician's Agreement. Brotherhood argues that the Agreement should be construed so that the involved work does not fall within the exception, primarily because of the uninterrupted practice of more than ten years preceding the instant dispute during which employes covered by the Brotherhood's Agreement exclusively performed the maintenance work on the involved equipment at the Dante Yard.

In this case Carrier cannot be found to have contracted for the involved

work with both the Brotherhood and the Electricians, as the Brotherhood in its Submission suggests: according to the terms of Brotherhood's Agreement, if the work was contracted for with the Electricians, it was excepted from reservation for the Brotherhood. The issue we must decide is whether the involved work is work in the Maintenance of Equipment Department covered by the Electrician's Agreement; if it is, then, according to the explicit terms of the Brotherhood's Agreement, it is not reserved for the Brotherhood. Pertinent terms of the Electrician's Agreement are the preamble, Rules 53, 54 and 55, which are set forth in Carrier's Submission and need not be repeated here.

There was no dispute on the property that the involved work was the repairing of motors and/or electrical wiring in the Maintenance of Equipment Department, but Brotherhood argues that the failure of the Electrician's Agreement to specify that it covers wiring and motors when they are part of a turntable means that the Electrician's Agreement does not cover the involved work. We find no validity in this argument: the pertinent rules list electrical parts and components without connecting them to particular pieces of equipment; a sound construction of the rules should not require the turntable to be named for the repair of its wiring or motor to be covered along with the wiring and motors of all of the other un-named equipment in the department.

The evidence of practice at the particular location introduced by the Brotherhood was not strong enough to prove that the language of the Electrician's Agreement was intended not to include the involved work wherever on the system it is required. In the absence of weighty evidence to the contrary, the language of the Electrician's Agreement must be read with usual meanings attached to the words; therefore, we find that the involved work was not reserved to the Brotherhood and that the Brotherhood's Agreement was not violated as claimed by the Brotherhood.

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 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 as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.

DISSENT TO AWARD NO. 13285

DOCKET NO. SG-12814

The Majority misconstrues the determinative issue in this case when they look to the agreement of another craft to apply and interpret a Signalmen's Agreement. The intent and understanding of the parties to the controlling agreement is evident from their conduct over a period recognized by the Majority to have exceeded ten years. Such evidence, contrary to their view, is more than sufficiently weighty to establish the validity of the claim, especially when such practice antidates the agreement between the parties and such agreement does not clearly abrogate the practice. The Majority has disregarded our many awards so holding and, by their action, opened new areas for dispute.

Award No. 13285 is in error; therefore, I dissent.

W. W. Altus
For Labor Members