

Award No. 13703

Docket No. SG-13677

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania-Reading Seashore Lines that:

(a) The Carrier violated the Current Agreement between the Carrier and the Brotherhood of Railroad Signalmen when it failed and/or declined to apply the Scope, Classifications, Seniority Rules, and other provisions of the current working Agreement, bearing an effective date of August 1, 1944, by not assigning generally recognized Signal Work to employees covered by the current Agreement. Specifically the Signal work involved is the fitting up and wiring of three signal instrument and relay cases which were used to provide Highway Crossing protection at three separate crossings at Palermo, New Jersey, on May 3, 1961.

(b) Claim that the below listed employees, who hold seniority under the current Agreement, and who by reason of assignment to the Signal Construction Gang, with headquarters at Westville, New Jersey, should have performed this work, be paid, at the current pro rata rate, forty-five (45) hours each for the work that was diverted to persons not covered by the Current Agreement. Signalmen C. & S., G. W. Dunkle, A. L. Hansel, G. F. Danley, and A. O. Postol.

EMPLOYEES STATEMENT OF FACTS: This dispute arose as a result of the Carrier purchasing factory wired signal instrument and relay cases which were used to provide highway crossing protection at three separate rail-highway crossings at Palermo, New Jersey. The fitting and wiring of such signal apparatus is reserved exclusively to employees covered by the Signalmen's Agreement and has always, until this instance, been performed exclusively by employees covered by that Agreement.

The Scope of the effective Agreement specifically provides that employees covered in Article 1, (the classification rule) will perform "the wiring of telegraph, telephone and signal instrument cases." (Emphasis ours.) There is no exception in the Scope which would permit the Carrier to farm this work out to persons not covered by the Signalmen's Agreement.

Therefore, in view of this established principle, the Carrier respectfully submits that in the event your Honorable Board somehow were to decide that a violation of the Agreement did occur in this case, it would not be proper for it to enter an award requiring payment of the claim on any other than the above indicated basis.

IV. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreements And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that there has been no violation of the Scope Rule of the Applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimants listed held regular assignments as Signalmen, C. & S., headquarters at Westville, N.J. Incident to the installation of highway crossing protection at Palermo, N.J., the Company purchased (3) factory wired signal instrument and relay cases from the Union Switch and Signal Company, Swissvale, Pa. These three cases were installed by employees of the Company's C. & S. Department on May 3, 1961.

Employees contend Carrier violated the current Agreement when it transferred the signal work involved in the fitting up and wiring of the relay and instrument cases used in providing crossing protection at three separate crossings at Palermo, N.J. on May 3, 1961; that the time claimed was based on time consumed on previous installations and projects; that the Scope Rule clearly and definitely spells out the signal work involved in this claim when it states, "and the wiring of telegraph, telephone and signal instrument cases"; that all such work was previously performed by Signal Employees up to this violation; that Signal Employees were available and qualified to perform this work; that Carrier's intentions to allow this work to be performed elsewhere

were not made known to this Committee and no exceptions to this Agreement were made or intended, being in direct violation of the rules and intent of this Agreement.

Carrier contends the purchase and delivery to the Carrier of any manufactured piece of signal equipment or device cannot be construed as a violation of the Scope Rule, or any other provision of the applicable agreement; that the claim therefore is without merit and should be denied.

The issue before this Board is whether Carrier had the right to contract out the wiring and fitting up of the three signal instrument and relay cases. This issue is not new to this Board and has been considered in a number of Awards.

The Organization submits "that the Scope Rule clearly and definitely spells out the signal work involved in this claim when it states, 'and the wiring of telegraph, telephone and signal instrument cases.'" Further, the second paragraph of the Scope Rule supports their claim:

"(Effective December 1, 1951) The employees in the Telegraph and Signal Department shall continue to install, maintain and repair, and do testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply (when such compressors, sets or power supply are used wholly or primarily for signal or telegraph and telephone devices, apparatus or lines and are individually housed in signal or telegraph and telephone facilities) which are part of the signal or telegraph and telephone systems, to the extent that such work is now being performed by employees of the Telegraph and Signal Department. This paragraph shall not, however, prejudice any rights which such employees may have under the Scope Rule, exclusive of this modification, to claim work performed by other crafts in violation of the Scope Rule."

They contend, that a review of all awards of this Board, made prior to the effective date of December 1, 1951, namely Awards 4662 and 5044, which held that certain Carriers could purchase pre-wired cases, were not based on agreements with the specific language contained in the Scope herein. The effect of the second paragraph was employees would continue to install, maintain, repair and do testing incident thereto, to all devices to the extent that such work is now being performed by employees of the Telegraph and Signal Department. With this contention, we disagree.

The Board is aware that the second paragraph was not in effect on date of claims involved in Awards 4662 and 5044, however, said paragraph was involved in a later claim of Award 7833. Award 7833 contained a similar Scope and paragraph now before the Board in the instant dispute, which interpreted both Awards 4662 and 5044, as well as Award 4713, cited as authority by the Organization. Award 4713 is also cited by the Organization in the instant case. The Opinion of the Board in Award 7833 is applicable to the instant dispute:

"In Award 5044, this Board, with Referee Carter sitting as a member, had for its consideration Award 4662 urged as controlling by the Carrier and Award 4713, also cited to us as authority for the instant case, argued as controlling by the Organization. We held in Award 5044 that the principle in the two cases was the same and adhered to the interpretation established in Award 4662. In Award 4662 it was held that the purchase and delivery of any manufactured

piece of signal equipment or device cannot be a violation of the Scope rule of the Signalmen's Agreement; in Award 4713 the holding was directly to the contrary." (Emphasis ours.)

The Scope Rule specifically lists items of work accruing to the Employees and is confined to such work recognized in connection, "herein set forth engaged in the installation and maintenance of all signals" . . . "including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and the maintenance of car retarder systems, and all other work in connection with installation and maintenance thereof . . ." (Emphasis ours.)

It is not questioned that the signal employees performed all the work necessary to installation, maintenance, repair and adjustment of the three instrument cases, when received on the property of the Carrier.

We find the work involved in the instant dispute of prefabrication and basic wiring performed by employees of the Union Switch and Signal Company of Swissvale, Pa., was not work within the Scope of the Signalmen's Agreement accruing to the Employees. The Carrier was not in violation thereof.

The majority of Awards of this Division with similar facts and issues, has consistently held that the Carriers involved have not violated the controlling agreements when purchasing factory equipment, wholly or partially assembled, as a function of management. Awards 12553, 11792, 11438, 9918, 9604, 7965, 7833, 5044, 4662 support our findings.

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 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 30th day of June 1965.

DISSENT TO AWARD NO. 13703

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We can not agree that to compound the error of Award No. 7833 adds substance or credence to either Award. Award No. 13703 is in error, therefore, I dissent.

/s/ W. W. Altus
W. W. Altus
For Labor Members

7/26/65