Award No. 14340
Docket No. SG-14491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company that:

(a) The Carrier violated and continues to violate the Scope Rule and other provisions of the current Signalmen's Agreement when it arranged, contracted, farmed out, or otherwise permitted persons not covered by the Signalmen's Agreement to install and maintain communication facilities on the Florida East Coast Railway System. The facilities designated by the Carrier as the Florida East Coast Dial Telephone System, was installed prior to November 1, 1962—the date it was placed into service. Other than signal forces continue to perform maintenance work on these facilities.

(b) The employes of the Communications-Signal Department, both those working and those furloughed, be compensated at their respective rates of pay at the time and one-half rate for an amount of time equal to that spent or which will be spent by outside workers performing the diverted work of installing and maintaining the communication facilities referred to in paragraph (a) herein.

(c) This claim is to cover all work which has already been performed by outside workers on the communication facilities referred to in paragraph (a) herein, and all work which will be performed by outside workers on the facilities in the future.

EMPLOYES STATEMENT OF FACTS: This dispute is based on the fact that work on communication facilities on the Carrier's property was performed by persons not covered by the Signalmen's Agreement, the Scope of which has covered signal and communication systems for at least tweny-five (25) years.

Some time prior to November 1, 1962, the Carrier arranged, contracted, farmed out, or otherwise permitted persons not covered by the Signalmen's Agreement to install and maintain communication facilities designated by the Carrier as the Florida East Coast Dial Telephone System. These facilities were installed prior to November 1, 1962, the date they were placed in service.

thereby. It was agreed between us that the employes covered by the revised Signalmen's Agreement effective April 1, 1948, will, as in the past, continue to perform electrical and mechanical work on line-of-road which comes within the jurisdiction of the Communications-Signal Department, and that the rights of the employes covered by the revised Signalmen's Agreement effective April 1, 1948, will (as in the past) be subject to and subordinate to the Railway's obligations under its agreements with the Western Union Telegraph Company, the American Telephone and Telegraph Company and others now in existence, and future revisions of the present contracts, relating to maintenance of facilities on the Florida East Coast right-of-way owned exclusively or in part by those Companies.

It was further understood that the words 'Inspection' and 'testing' in the Scope Rule of the Revised Signalmen's Agreement effective April 1, 1948, do not apply to the inspections and tests made by inspectors and other officials, to see that the employes are properly performing their work and to see that the apparatus is functioning properly.

Please sign one copy of this letter in the space provided for that purpose to signify your concurrence in this understanding and return to me.

Yours very truly,
C. L. BEALS,
Chief Operating Officer,
Florida East Coast Railway Company

Brotherhood of Railroad
Signalmen of America,
By: J. E. Dubberly,
General Chairman.
Approved: T. H. GREGG,
Vice President."

OPINION OF BOARD: In this case the Brotherhood contends that the Carrier violated the current Signalmans' Agreement, as amended, and/or permitted persons not covered by the agreement to install and maintain certain communication facilities on its system referred to as the Florida East Coast Dial System. The Brotherhood further contends that the Signalmen have the exclusive right to install and maintain these communication facilities on the system of the Carrier.

The Scope, which is the first part of Rule 1 of the Agreement, reads as follows:

RULE 1—SCOPE AND CLASSIFICATION

"This Agreement covers the rates of pay, hours of service and working conditions of all employes classified in Paragraphs (a) to (g) of this Rule engaged in the construction, repair, reconditioning, inspection, testing and maintenance, either in the shops or in the field, of the following:

1. All signals, interlocking and signaling systems, centralized traffic control systems, automatic train controlling or stopping devices,

highway crossing protective devices, and all other work generally recognized as signal work, but not including signaling apparatus and devices attached to, or installed in, locomotives and cars.

2. Telegraph, telephone and other communication systems within the jurisdiction of the Communications-Signal Department.

3. Other work under the jurisdiction of the Communications-Signal Department being performed by employes within the scope of this Agreement on its effective date."

The effective date of the Agreement, in so far as it is pertinent to the issue herein, is April 1, 1948.

The question to be determined by this Board is "whether or not the communication system involved herein is within the jurisdiction of the Communications-Signal Department" (Page 9 of Record).

There is no dispute as to the material facts in this case. The record disclose that since May of 1927, the Carrier had two communication systems. One system was composed of facilities of the Southern Bell Telephone and Telegraph Company. The other system was owned by the Carrier. As business increased the facilities of the Bell System were expanded to meet the increase. Copies of the contracts between the Carrir and the Southern Bell Telephone and Telegraph Company are in the record. (Pages 46-54) An examination of the contracts discloses that the original contract was executed May 3, 1927; it was revised and extended by a contract which became effffective December 21, 1941, when a "Dial" system was installed and further revised and extended by contract dated June 20, 1962, which became effective November 1, 1962.

There can be no question but that the equipment installed by the Southern Bell Telephone and Telegraph Company was, and is, the property of that company. The Carrier under the agreements with the Southern Bell Telephone Company is required to pay the established rates for the services provided.

The communication system owned by the Carrier is still in operation and maintained by the Carrier's Communication-Signal Department employes.

The record further discloses that from May 3, 1927 until November 21, 1962, a period of time during which the Carrier had the Bell Company install its facilities on its system the Brotherhood did not make any claim that its Agreement with the Carrier had been or was violated. It raises this issue for the first time by letter dated November 21, 1962.

The record clearly establishes that the work of the type involved in this claim had and has been performed by Southern Bell Telephone and Telegraph Company and that it was performed while other agreements between the parties were in existence with no complaint by the Brotherhood.

The present agreement of the parties became effective April 1, 1948, after negotiations between the parties. Before that date, and on March 23, 1948, a Letter of Understanding was duly executed by the parties, the pertinent part of which, is as follows:

"It was agreed between us that the employes covered by the revised Signalmen's Agreement effective Aprill, 1948, will, as in the past

continue to perform electrical and mechanical work on line-of-road which comes within the jurisdiction of the Communications-Signal Department, and that the rights of the employes covered by the revised Signalmen's Agreement effective April 1, 1948, will (as in the past) be subject to and subordinate to the Railway's obligation under its agreements with the Western Union Telegraph Company, the American Telephone and Telegraph Company and others now in existence, and future revisions of the present contracts, relating to maintenance of facilities on the Florida East Coast right-of-way owned exclusively or in part by those Companies."

The Brotherhood does not deny the provisions of the Letter of Understanding dated March 23, 1948, duly signed by it, but contends that the Letter of Understanding was superseded by the Agreement between the parties that became effective April 1, 1948.

We do not agree with this contention of the Brotherhood.

The letter is clear and concise in its terms. It specifically refers to the Agreement that is to become effective April 1, 1948, and states in no uncertain terms **"that the rights of the employes covered by the revised Signalmen's Agreement effective April 1, 1948, will (as in the past) be subject to and subordinate to the Railway's obligation under its agreements with the Western Union Telegraph Company, the American Telephone and Telegraph Company and others now in existence, and future revisions of the present contracts, relating to maintenance of facilities on the Florida East Coast right-of-way owned exclusively or in part by those Companies."** (Emphasis ours)

This Board has held on any number of occasions that we follow the ordinary rules of contract construction. We are bound by the provisions of the Agreement before us. We have no power and we may not make new rules, abrogate rules or alter existing rules. That is the province of the parties. We must ascertain and give effect to the intention of the parties and that intention is to be deduced from the language employed by them.

The record discloses that under date of November 21, 1962, the Brotherhood filed this claim with the Carrier. On December 3, 1962, the Brotherhood served a Notice pursuant to the provisions of Section 6 of Railway Labor Act on the Carrier advising it, that the Brotherhood, desired to revise the existing agreement between the parties in the manner set forth in the Appendix "A" annexed to the notice. (Record pages 68-74). Negotiations were held but no agreement reached, and there were no changes made in the Scope Rule of the Agreement of April 1, 1948.

This Board has held that such a request by a Claimant, for a change or revision of a rule and/or rules in an existing agreement, is an implied admission that the Agreement did not reserve to the Claimant the right and/or rights sought to be enforced. See Award 11580 (Hall); 10425 (Dolnick).

In Award 10585 (Russell) we held:

> "When a contract is negotiated and existing practices are not abrogated or changed by its terms such practices are enforceable to the same extent as the provisions of the contract itself. (See Award 5747 (Wenke))."

We find that the practice complained of in this case has been followed by the Carrier, at least, since 1927; that the parties to this dispute, since

that time, negotiated new Agreements in 1938 and 1948; that the Agreements of 1938 and 1948 did not abrogate nor change the Scope Rule with reference to the practice complained of in this dispute.

Based on the evidence in this record we cannot find that the Agreement was violated.

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

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1966.

DISSENT TO AWARD NUMBER 14340
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The Majority, the Carrier Members and Referee, either ignored certain controlling facts of record or failed to understand them. We believe those failings to be too patent to warrant recounting here; because of them, we dissent.

It should be noted that one of Carrier's principle defenses and one of the facts cited by Majority to substantiate their holding is that:

> "The communication system owned by the Carrier is still in operation and maintained by the Carrier's Communication-Signal Department employes."

Having found this fact to be of such importance, it must be considered to be essential to a denial award, and the absence of such fact as demanding the opposite conclusion.

W. W. Altus
For Labor Members 5/18/66

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