

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) The Carrier has violated and continues to violate the Signalmen's Agreement and letter of commitment from Mr. Harvey of November 19, 1948, when it farmed out, removed, or otherwise arranged or assigned generally recognized signal work to persons not covered by and who hold no seniority rights under the provisions of the Signalmen's Agreement.

(b) The Signal Department employes of the Cumberland Division listed on the seniority roster as of July 30, 1958, be compensated at their regular rate of pay for an amount of time equal to that consumed by other employes in performing the fitting and pre-wiring of the relay instrument cases, racks, and housings to be used in connection with the installation of car retarders at the new yard, Cumberland, Maryland.

EMPLOYEES' STATEMENT OF FACTS: Various items of signal equipment and material were received at the Glass House Signal Storeroom, Cumberland, Maryland, beginning on or about July 30, 1958. Among the items received were cable junction boxes and pre-wired relay instrument cases, racks and housings. The fitting up and wiring of these items before they were received at Cumberland was performed by persons who hold no seniority or other rights under the Signalmen's Agreement in effect on this Carrier, even though there has been a substantial number of Signal Department employes furloughed on the Cumberland Division since January, 1958. Since 1948 junction boxes have been fitted and relay racks have been wired by Signal Department employes of the Cumberland Division.

The items delivered to Cumberland were stored and it was not anticipated that they would be installed in the near future, though they would eventually be used in connection with the installation of a new car retarder system at Cumberland. They were eventually installed by this Carrier's signal forces and the new car retarder system referred to as the westbound hump was placed in service at Cumberland on or about September 6, 1960.

to deny that part of the July 30, 1956 claim within the 60 day period cannot validate it. * * *"

Carrier submits that the wage claim at Part (b) of this protest is basically defective and necessarily must be denied outright for the failure of the Committee to name the claimant or claimants under an application of the Time Limit Rule.

Without prejudice to "Carrier's Special Statement" above, the Carrier intends to deal in terms of this protest on its merits.

(Exhibits not reproduced.)

OPINION OF BOARD: The disputed work involved in this controversy consists of the fitting and pre-wiring of relay instrument cases, racks and housings used in connection with the design and installation of a new car retarder system at Carrier's Yard in Cumberland, Maryland. Carrier entered into a contract with a manufacturer of signal and other electrical equipment in February 1957, for the development, manufacture and sale of an automatic car retarder system. The signal Company shipped material for said system to Carrier's signal department storeroom at Cumberland, Maryland, including the pre-wired instrument cases, racks and housings, for installation by Carrier's employees represented by Petitioner.

Petitioner contends that the fitting and wiring of relay racks, cases and housings is incidental to the installation of car retarders and constitutes work that belongs to signal employees covered by the controlling Agreement between the parties. Petitioner relies upon an exchange of correspondence between the parties in 1948, which Petitioner asserts is a negotiated understanding that, thereafter, signal relay housings and boxes would be wired by employees covered by the Signalmen's Agreement. Therefore, that the disputed work is within the purview of the Scope Rule contained in the Agreement between the parties.

In the first instance, Carrier contends that the claim is not properly before us because part (b) of the claim does not name specific Claimants and must be rejected under Section 1 (a) of Article V of the August 21, 1954 National Agreement between the parties. This objection was not raised by Carrier on the property and no reference was made to it until the submission of this dispute to the Board. We have repeatedly held that such objections are procedural in nature and that the parties may waive procedural requirements. (Awards 11044, 11752 and 14465.) Thus, Carrier will be deemed to have waived objection to consideration on the merits of the dispute.

As to the merits of the dispute, Carrier contends that the work in issue is wholly outside of the concept of the Scope Rule, as well as the exchange of correspondence between the parties in 1948, which Carrier asserts has been superseded by the current Agreement between the parties. Carrier's position is that the work involved a new concept requiring advanced techniques and knowledge, the complexity of which is evident from the record. Carrier maintains that the purchase of such new equipment, in whatever form assembled by the manufacturer, did not constitute a farming out of work under the Agreement for the basic reason that it had never been under the controlling Agreement or Agreements. (Award 5044.)

A review of the probative evidence discloses that Carrier's new installation at Cumberland, Maryland represented the latest techniques in automation, employing apparatus and circuits which are extremely complex. Thus, the

manufacturer insisted that the entire system be assembled and thoroughly tested at the factory prior to shipment. Logically, pre-wiring of relay racks, cases and housings, in dispute herein, was performed by the manufacturer before shipment to Carrier for ultimate installation by Carrier's employees.

In an earlier Award involving a similar controversy between the same parties this Board concluded as follows:

AWARD 4712

"To insist that the Carrier had no right to buy or contract for the installation of this first car retarder system on its property from a responsible, experienced manufacturer, under the circumstances set forth in this record, would be equivalent, in our considered judgment, to telling it not only how to organize its engineering, design, research, and other supervisory services, but to deny it access to operating guarantees its own employees, only acquiring skill in this special field as the work progressed, could not reasonably be expected to give, whether they were engineers or signalmen technically proficient in the work they are accustomed to do.

We conclude on the whole record that inasmuch as neither any of its officials nor employees covered by the Signalmen's Agreement had had any previous experience with the installation or the operation of the car retarder system here involved, or any similar system, the Carrier was justified, on the basis of prudence and good judgment, in transferring the risk to an experienced, responsible manufacturer for the first installation of a car retarder system on its property."

Although the actual installation of the new car retarder system was performed by Carrier's employees represented by Petitioner, the same principles as expressed in Award 4712 are applicable and controlling with respect to the disputed work encompassed by the present claim. Accordingly, we will deny the claim.

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 Contract 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 29th day of July 1966.

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