Award Number 17259
Docket Number SG-17854

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL COMPANY, LAKE REGION
(Formerly New York Central Railroad Company, Western District)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Lines West of Buffalo) that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it unilaterally and arbitrarily permitted and otherwise ordered employes of a Signal Shop established at E. Brookfield, Massachusetts, on the Boston and Albany Railroad to wire two (2) high double signal instrument housings, such housings ordered wired for and now installed at Signal 1921 E and W and Signal 1922 E and W, located at or near Berea, Ohio, on the Eastern District of the New York Central System.

(b) Carrier compensate the following named employes of the System Signal Shop—Signal Foreman K. K. Hardwick, Leading Signal Mechanic G. H. Turner, Signal Mechanics J. J. Crowley, F. J. Simons, and R. L. Glant each for two hundred-forty (240) hours' pay at their respective overtime rates of pay." (Carrier's File: 594-27.)

EMPLOYES' STATEMENT OF FACTS: There is an Agreement, commonly known as the "Lines West Agreement," hearing the date of March 1, 1951, between the parties to this dispute, which is by reference made a part of the record herein. The rules of that Agreement here pertinent are:

RULE 1. "This agreement covers rates of pay, hours of service and working conditions of all employes in the Signal Department classified herein, engaged in the construction, installation, inspection, testing, maintenance and repair either in the signal shop or field of:

(a) Electric, electro-pneumatic, pneumatic, electro-mechanical or mechanical interlocking systems, electric, electro-pneumatic, pneumatic or mechanically operated signals and other signaling systems, highway crossing protective devices generally installed and maintained by signal forces, and appurtenances of all these devices and systems.

OPINION OF BOARD: In this case, Carrier had two high double Signal Instrument Housings assembled by its employes at the East Brookfield, Massachusetts Signal Shop. The employes at the East Brookfield Signal Shop are covered by an agreement with Carrier.

Subsequently, Carrier caused this same assembled equipment to be installed at Berea, Ohio, by signal employes covered by a separate agreement with Carrier.

Claimants here are employes in the Elkhart, Indiana, Signal Shop. They contend that Carrier violated its Agreement with Claimants when the assembly work was performed at the East Brookfield Shop rather than at the Elkhart Shop.

Claimants cite Rules 1 and 24 and the Memorandum of Agreement of September 11, 1958, as the basis for subject claim. Claimants contend that Rule 1 requires Carrier to have the work which is the cause of this dispute to be performed in the field, or by the employes on the shop seniority roster, i.e. employes of the Elkhart Shop who are Claimants in this case.

The question is whether the Carrier has the right to have the assembly work done elsewhere, either by the manufacturer or by a Signal Shop covered by a separate agreement with Carrier.

Past rulings of this Board seem to make it clear that Carrier has the managerial prerogative to purchase equipment of the nature in the instant dispute from the manufacturer already assembled and later this same equipment can be installed by Carrier's employes. In such a case, it seems clear that there would be no violation of the Agreement.

We cannot find a distinction between management's decision to have the manufacturer assemble the equipment or Carrier's decision to have another Signal Shop perform the assembly requirement. The chief difference is that in the latter case, the Carrier would be bound by the appropriate Agreement with its Signal Shop employes. No violation of such Agreement is before this Board.

We do not find that the Rules of the Agreement relied upon by Claimants give any exclusive right to have the assembly work in this case performed by the Claimants. These rules do not preclude Carrier from deciding to have this work performed at the East Brookfield Shop.

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

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 1969.

DISSENT TO AWARD NO. 17259

DOCKET No. SG-17854

Award No. 17259 is in error. The Majority states that "The question is whether the Carrier has the right to have the assembly work done elsewhere, either by the manufacturer or by a Signal Shop covered by a separate agreement with the Carrier." That the Carrier is not free to have assembly work done by a manufacturer once the manufactured parts to be assembled have come into the possession of the Carrier has been settled by our prior awards. (See Award No. 6664) (Emphasis ours)

The Majority's inability to "find a distinction between management's decision to have the manufacturer assemble the equipment or Carrier's decision to have another Signal Shop perform the assembly requirement" is in direct conflict with and disregard of our earlier awards. In Award 16531 we said:

> "The 'right of purchase' by carriers has been upheld in cases of prewired signal relay cases, pre-stamped identification tags, slip covers, pallets, etc. Consequently if this were a case of Carrier buying printed forms, stationery and office supplies, which the sellers were shipping directly to Carrier's offices, it would constitute merely another example of 'right of purchase.'
>
> "But there is a considerable difference between products and services. The 'right of purchase' has not been found to violate the Agreement when something is bought, even where it embodies certain work previously performed on the property. It is quite different where services are 'purchased.' Virtually every activity of Carrier could then conceivably be turned over to outsiders. Aside from whatever product or products Victor itself may manufacture or sell, Carrier has purchased nothing with this arrangement except the services of Victor's employees in place of its own. This is contracting out, and not the purchase of a commodity.
>
> "Carrier also relies on the non-exclusivity doctrine, which denies claim to work that has not been within the exclusive province of the Employes. Carrier notes that local offices had always bought some of their supplies locally. This is acknowledged by the Employes and unchallenged. But the Claimants clearly had exclusivity in the central stocking and shipping of supplies that were not purchased from and delivered directly by the seller to Carrier's offices. No one else had ever done such warehousing and shipping of the Stationery Department items since 1912, except the occupants of these positions. Now Victor receives the merchandise from various suppliers, warehouses it, and ships it as requisitioned.

"Claimants have no right to claim jurisdiction in the local purchasing process, but they cannot properly be replaced in the specific functions which they had hitherto performed exclusively. If there were no longer any warehousing, and merchandise purchased from suppliers were shipped directly, Claimants could not sustain their claim. As it is, they have established violation of the Agreement."

Similarly here, the employes have claimed no right to manufacture or purchase items. Their claim was only for the right to continue to perform such services as had previously been performed exclusively by employes under the controlling Agreement.

Award No. 17259 being in error, I dissent.

/s/ W. W. ALTUS, JR.
W. W. Altus, Jr.

For Labor Members

July 25, 1969

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