

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19369
Docket Number SG-17169

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated the current Signalmen's Agreement, in particular Rule 1 (Scope), when, on or about June 15, 1966, it allowed, diverted or otherwise removed from the jurisdiction of the employees covered in the Signalmen's Agreement on this Carrier the work involved in converting from Interlocking to CTC system at CW Cabin, Peru, Indiana. Heretofore, the construction, improvements and maintenance within the Home Signal Limits of the Interlocking Plant (in respect to the intersection of the Chesapeake & Ohio and the Wabash Railroads) were performed by the employees covered in the Signalmen's Agreement with the Chesapeake & Ohio Railway Company. However, the Carrier has removed and allowed other than the Signal Employees on this Carrier to perform the work involved between the Home Signals on the Wabash portion of the intersection.

(b) Carrier be required to compensate the Claimants named herein at their applicable pro rata rates of pay, in the comparable amount of time that others were allowed to perform the work as cited in part (a) of this claim. This claim to be retroactive sixty (60) days from filing date of claim.

J. D. Perrow, Signal Foreman	(System)
W. O. Broy, Leading Signalman	(System)
J. S. Dudley, Signalman	(System)
G. Cornwell, Signalman	(System)
P. T. Click, Assistant Signalman	(System)
W. B. Roberts, Assistant Signalman	(System)
E. H. Adkins, Assistant Signalman	(System)
T. W. Fugate, Signal Foreman	- Chicago Division
W. C. Clark, Signalman	- Chicago Division

(Carrier's File: SG-240)

OPINION OF BOARD: The claim alleges a diversion of Scope covered work in connection with a Chesapeake and Ohio and Wabash (now Norfolk and Western) railroad crossing at Peru, Indiana.

The record shows that by Agreement between the two Carriers dated May 5, 1914, the C&O would provide an interlocking plant and operate it. The C&O constructed such plant and thereafter maintained it with its signal employees. The May 5, 1914 Agreement was amended by an agreement between the Carriers dated January 12, 1935, under which agreement the C&O continued to maintain the interlocking facilities. The Agreement of January 12, 1935, contained the following:

"(a) THIS AGREEMENT shall continue and remain in force during the existence and operation of the interlocking plant and crossing, or until discontinued by either party upon one year's written notice.

"(b) The provisions of this agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, lessees, and assigns."

On September 30, 1965 the two carriers (C&O and Norfolk and Western) entered into an Agreement by which the two roads agreed that in the future each road would install, operate and maintain the necessary signal facilities on its own properties and rights of way. C&O signal employees, claimants, dispute the right of the Carriers to have the work in the new arrangement apportioned to C&O and N&W (formerly Wabash) signal employees in the manner provided for in the September 30, 1965 Agreement between the two Carriers.

Numerous disputes have been before the Board where two or more rail Carriers have found it necessary and desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed. It has been consistently held that the work to be performed under such circumstances falls to the Carrier and its employees who by reason of such Agreements between the Carriers, have the superior right or contractual duty to perform it. See Awards 11002, 6210, 3450, among others. Applying this principle to our present dispute, so long as the C&O, by reason of its contract with the Wabash (now N&W) had a right to construct and maintain the interlocking facility, then such signal work belonged to C&O signal employees. However, when the two Carriers proceeded in a lawful and regular manner to change the Agreement between them to provide that each would install, operate and maintain the necessary signal facilities on its own properties and rights of way, the rights of C&O signal employees to install and maintain signal facilities on the Wabash (now N&W) ceased as the Scope Rule cannot extend to work that does not belong to the Carrier, but only applies to work that the Carrier has to offer, (Award 13056).

The Claim will be denied.

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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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.