

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20378
Docket Number SG-6700

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen of America
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Elgin, Joliet and Eastern Railway:

(a) That the Carrier violated the provisions of the current Signalmen's working agreement between this Carrier and the Brotherhood, when on September 13, 14, and 17, 1951, at Waukegan, Ill., it caused an unauthorized diversion of signal line-wire work to an electrical T. & T. line gang.

Also when, on September 18, 1951, at North Chicago, Ill., it caused an electrical T. & T. line gang to perform signal line-wire work.

Also when, on September 19, 1951, at West Chicago, Ill., it caused an electrical T. & T. line gang to perform signal line-wire work.

(b) That the following Signal Department employees, to whom this work properly accrued under the agreement, be allowed the following over-time earnings to cover the work of which they were deprived as a result of the Carrier's violation of the Signalmen's working agreement:

H.C. Dieter,	- Signal Foreman	- 40 hrs.,	at	\$3.04	per hour
D. Schumaker,	- Lead. Signalman	- 40 hrs.,	at	3.0615	" "
W. Timm,	- Signalman	- 40 hrs.,	at	2.9355	" "
N. Hilger,	- Asst. Sig.	- 40 hrs.,	at	2.7735	" "
F. Marshall Jr.,	- Asst. Sig.	- 40 hrs.,	at	2.5215	" "
R. Kovac,	- " "	- 40 hrs.,	at	2.5215	" "

OPINION OF BOARD: Hoary is the dispute. The Claim dates are all within the month of September 1951.

The Brotherhood of Railroad Signalmen of America (BRS), petitioner herein, named as respondent, Elgin, Joliet and Eastern Railway Company (Carrier). Carrier timely moved that the International Brotherhood of Electrical Workers (IBEW) was a third party in interest and being in such status it should be served with Third Party Notice. It cited in support Railway Labor Act (RLA) Section 3. First (j). BRS opposed. The Partisan Members of the Board deadlocked the raised procedural issue relative to perfection of this Board's jurisdiction. The National Mediation Board

(NMB), on petition made to it, named a Neutral Referee to sit with the Board for the purpose of resolving the disputed issue. Following argument of the parties a majority of the Board, as constituted, issued the following Award on June 25, 1954:

Notice of oral hearing must be given to the Electrical Workers as well as to the Carrier and the Signalmen.

The Notice issued. IBEW intervened. Due process was satisfied. (NOTE: See, T-C. E.U. v. Union Pacific R. Co., 385 U.S. 157 (1966)) Now, some twenty-three years after the occurrences giving rise to the Claim, the Claim is before us for adjudication on the merits.

The issue, in this merits adjudication, is whether the work involved is work exclusively reserved to BRS. IBEW and Carrier plead and argue that it is not. All three parties cite a Memorandum Agreement dated July 7, 1947, hereinafter called Tripartite Agreement, which reads, with emphasis supplied:

TENTATIVE AGREEMENT BETWEEN ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PENDING DEFINITE AGREEMENT AS TO WHICH BROTHERHOOD IS TO CONSTRUCT AND/OR MAINTAIN SIGNAL LINE WIRES.

It is tentatively agreed between the Elgin, Joliet and Eastern Railway Company, the Brotherhood of Railroad Signalmen of America and the International Brotherhood of Electrical Workers that until such time as a definite agreement can be entered into by the above mentioned brotherhoods on the matter of who will construct and/or maintain signal line wires on the Elgin, Joliet and Eastern Railway, the T. & T. forces will be allowed to construct any new signal lines and the signalmen will be allowed to maintain the signal lines, without either party making a grievance which would put the Elgin, Joliet and Eastern Railway Company to any additional expense account one party claiming the other party is doing their work.

Signed this 7th day of July, 1947.

For B. of R. S. of A.

/s/ David F. Letts
General Chairman

For E. J. & E. Ry. Co.

/s/ W. K. Waltz
Signal Engineer

For I. B. of E. W.

/s/ John H. Barnes
General Chairman

(NOTE: A subsequent tripartite agreement between the parties, dated November 19, 1956, was not in being on the Claim dates. Therefore, its substance is not material or relevant in our consideration of the 1951 dispute.)

The Schedule Agreement between BRS and Carrier, in effect during the Claim dates, became effective on December 1, 1945. If there exists a conflict between its provisions and the Tripartite Agreement of July 7, 1947, the latter prevails.

There is no dispute that: (1) the work involved in the instant case is encompassed within the terms of the Tripartite Agreement; and (2) "a definite agreement" had not been entered into at the time of the occurrences alleged in the Claim.

Giving to the words used in the 1947 Tripartite Agreement their common meaning, we find: (1) the word "allowed," as twice used, connotes permissiveness--not an exclusive contractual right to the work is vested in either BRS or IBEW: (2) the words "without either party (BRS or IBEW) making a grievance which would put the Elgin, Joliet and Eastern Railway Company to any additional expense account one party claiming the other party is doing their work" was a contractual bar violated by BRS when it filed the Claim now before us.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.

Dissent to Award 20378, Docket SG-6700

The Majority in Award 20378 has placed a strained interpretation upon the language of the controlling Agreement and thereby errs.

It is evident from both the Agreement and the present record that prior to the execution of the Agreement both involved groups of employees were contending for exclusive jurisdiction to all work involving signal lines. The parties to the Agreement, in an attempt to reduce the probability of claims by one of the employee representatives because of employees represented by the other performing some signal line work, divided jurisdiction over the work and provided that neither representative would claim an agreement violation because of the employees represented by the other performing work in accordance with such division of jurisdiction. Any other interpretation, such as that of the present Majority, has the effect of holding that the employee parties performed a useless act. Such holding is contrary to accepted rules of contract interpretation.

Award 20378 is in error and I dissent.



W. W. Altus, Jr.
Labor Member