NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20467
THIRD DIVISION Docket Number SG-19915

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(The Ann Arbor Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Ann Arbor Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it contracted with or otherwise arranged for Railroad Accessories Corporation employes to perform signal work of fitting and wiring relay cases for flashing light signal protection at Broomfield Road, Mt. Pleasant, Michigan; said relay cases delivered to Mt. Pleasant on or about December 18, 1970.

(b) Carrier should now be required to compensate Signal Foreman Bob F. Johnson, Signalmen Robert L. Beracy, George D. Harris, and Leon F. Garrett, signal gang employes, for eighteen (18) hours each at their respective overtime rates of pay, for work performed by other than signal employes in fitting and wiring these relay cases.

OPINION OF BOARD: The Brotherhood of Railroad Signalmen on the Ann Arbor Railroad Company claims that the Carrier violated the "Scope" provisions of the Agreement by having the Railroad Accessories Corporation deliver into the Carrier's possession for installation by the Carrier's signalmen relay cases for flashing light signal protection at Broomfield Road, Mt. Pleasant, Michigan, the relay cases having been fitted and wired by Railroad Accessories Corporation employees.

The case at issue involves construction of a new highway crossing protection device on the Carrier's line at Broomfield Road, Mt. Pleasant, Michigan. Three relay cases, wired and assembled by the manufacturer, were purchased intact from the Railroad Accessories Corporation for use in the construction of this project. On June 3, 1970 a purchase order (Carrier's Exhibit J) was submitted to the Railroad Accessories Corporation for materials required to construct the highway crossing device. The materials ordered included two flashing, light signals with back-to-back light units, pedestrian warning bells, "Railroad Crossing" and "Stop On Red" signs, four two-way bootlegs, three crossarm boxes and three factory wired relay cases. The Railroad Accessories Corporation delivered the material to the Carrier on December 18, 1970. The Carrier's Signal Department employees performed the work necessary to place the equipment in operation, completing the project on November 23, 1971.

Work of fabricating the three relay cases at issue, such as cutting and stamping them out, assembling, welding, etc., was performed in the plant of the manufacturer, the Railroad Accessories Corporation, by their employees in the Fairdale, Kentucky plant. The Company manufactures transmitters, receivers, relays, terminals, resistors, and arrestors, and fitted and wired them into the relay cases and sold the completed units to the Carrier. The relay cases involved were wired according to circuit plans furnished by the Carrier although the relay cases in question were not limited to use at the Broomfield Road Crossing but could be used at other such-type highway crossings on the Railroad.

The basis of this claim is that the wiring and fitting of the relay cases is work covered by the scope rule of the Signalmen's Agreement, reading in part:

"SCOPE

> "This agreement governs the rates of pay, hours of service and working conditions of all employes in the Signal Department, except supervisory forces above the rank of foreman, clerical forces and engineering forces, performing the work generally recognized as signal work, which work shall include the construction, installation, maintenance and repair of signals, interlocking plants, car retarders, highway crossing protection devices and their appurtenances, central traffic control systems, signal shop work, and all other work generally recognized as signal work."

There is no question that the general principle laid down in Award 3251 by Referee Edward F. Carter is controlling:

> "Where work is within the scope of a collective agreement, and not within any exception contained in that agreement or any exception recognized as inherently existent as hereinabove discussed, we feel obliged to adhere to the fundamental rule that work belongs to the employes under the Agreement and that it may not be farmed out with impunity."

The dispute here hinges around the meaning of the scope rule; in other words, is the fitting and wiring of the three relay cases in question "the work generally recognized as signal work, which work shall include the construction...of signals...highway crossing protection devices and their appurtenances." The Organization argues that the fitting and wiring of the components of the three relay cases was indeed "construction", while the Carrier argues that the functions were "manufacturing" by the manufacturing corporation.

The intent of the parties must be determined before the scope rule can be properly applied. The wiring and fitting of relay cases which go into highway crossing protection devices and their appurtenances by a manufacturer is not specifically spelled out as work within the Signalmen's Agreement. Beginning in 1965, moreover, it was the practice of the Carrier to purchase from the manufacturer relay cases for highway protection devices as in this case. We note, also, that the Agreement here became effective December 1, 1945 and that it was in September, 1950 when this Board, in Award No. 5044 (Referee Edward F. Carter) denied a very similar claim of the Brotherhood of Railroad Signalmen, although on another railroad, with scope rule language "construction" as in the present dispute. In Award No. 5044, this Board sought out the intentions of the parties insofar as manifested in their agreement language and concluded that the language and purpose of the scope rule was not contemplated to deprive the Carrier of its fundamental right of management in determining its acquisition decisions towards efficient and economical operation. We believe that the reasoning of Award No. 5044 is directed towards the interpretation and meaning of the understanding of the parties as reflected in the words of their agreement and upholds the integrity of their agreement. We quote from this Award No. 5044:

> "The intent of the parties must be determined before the rule can be correctly applied. The wiring of relay houses by a manufacturer is not specifically spelled out as work within the Signalmen's Agreement. The Organization points out that the electrical appliances used were stock items that could be purchased and used indiscriminately for the purposes for which made. It is the integration of the various appliances and devices used, the method of wiring, and their regulation and adjustment within their functional range which produces the result sought. It seems to us that a Carrier, in the exercise of its managerial judgment could properly decide to purchase the engineering skill of the seller of railroad equipment, the benefits of its research and experience, the expertness of seller's employes, and a guarantee that it would operate efficiently and economically. Award 4712. To deprive a Carrier of this fundamental right of management is not contemplated by the rule. On the other hand, if Carrier chose to purchase the component parts of an intricate electrical system and have it assembled on the property, for reasons of economy or otherwise, it would clearly be the work of signalmen to perform in the absence of specific agreement to the contrary. The purchase of equipment is a function of management. It may purchase by item or in quantity;

"it may purchase with or without warranties as to its functional operation; it may purchase by stock items or by having it built to order; it may purchase equipment wholly or partially assembled; all without infringing upon the work contracted to signalmen. When material or equipment is purchased and delivered to the property of the Carrier, any construction, installation, maintenance and repair growing out of its use on the property of the Carrier within the scope of the generally recognized work of a craft or of work specifically assigned to such craft, it is work which belongs to the employes of that craft.

There is no contracting or farming out of work belonging to these claimants in the present case. The equipment was never purchased and delivered on the property of the Carrier for use until after the work claimed had been performed at the factory. The rights of employes never attached until the Carrier acquired possession of it. We quite agree that if the equipment has been delivered to the Carrier in such a manner that the rights of claimants under the scope rule attached, that a contracting of the wiring and assembly of the unit would then be a farming out of work belonging to these employes. We fail to see, however, that a purchase of new equipment in whatever form it may exist, can constitute a farming out of work under the Agreement for the fundamental reason that it never had been under the Agreement. That which was never within the scope of an agreement cannot be farmed out.

This construction of the rule is consistent with past practice on this Carrier. The record discloses a number of instances where factory equipped instrument cases have been purchased without complaint on the part of the Organization. It is a clear indication that the Organization itself did not construe the Agreement to include the assembling and wiring of instrument cases by a manufacturer as the work of signalmen. As we have previously stated:

> 'The conduct of the parties to a contract is often just as expressive of intention as the written word and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their actions with reference thereto, affords a safe guide in determining what the parties themselves had in mind when the contract was made.' Award 2436.

"We conclude therefore that the contract as interpreted by the parties on this Carrier adds support to the interpretation that we have herein announced."

We believe Award No. 5044 was correctly decided in construing the scope rule intention. Award No. 5044 was issued in 1950, and prior to 1965 when the Carrier here documents its initiation of the practice here in dispute, Award No. 5044 was cited as precedential authority in Awards Nos. 7833 (Shugrue), 7965 (Lynch), 11438 (Dolnick), and 12553 (West). Additional awards may be cited. As stated by Referee Dudley E. Whiting in Award No. 4569:

"One of the basic purposes for which this Board was established was to secure uniformity of interpretation of the rules governing the relationships of the Carriers and the Organizations of Employes."

Award No. 5044 was cogently reasoned and remains fully vigorous. We shall adhere to this award and its numerous progeny and deny this 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 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: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.