

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20684
Docket Number SG-20405

Dana E. Eischen, 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 and continues to violate the current Signalmen's Agreement, particularly Rule 1 (Scope), when on or about May 10, 1972 it assigned or allowed other than signal employees to assemble Insulated Rail Sections for use in and for operation of its signal systems on this property. As a result of such action:

(b) Carrier now compensate four (4) senior furloughed signal employees named below, at their applicable pro rata rate of pay for such work and in a comparable amount of time that other than signal employees are assigned the work as cited in part (a).

(c) Inasmuch as this is a continuing violation, said claim is to continue until such time as Carrier takes necessary corrective action to return said work to its signal employees:

Ronald C. Carrico, ID No. 2613790

Ronald R. Wetherholt, ID No. 2615087

Ray D. Robinson, Jr., ID No. 2609003

Raymond L. McCulley, ID No. 2611724

/Carrier's File SG-307; General Chairman's File 720604-128/

OPINION OF BOARD: The instant claim arises out of work allocation by Carrier at its Barboursville Reclamation Plant on and after May 10, 1972, as between signal employees represented by Petitioner and Maintenance of Way forces represented by the Brotherhood of Maintenance of Way Employees, Intervenor herein. On or about the claim date, Carrier began production of insulated rail joints using a newly developed epoxy resin fabrication technique for use with ribbons of continuous welded rail. Insulated rail joints, in addition to performing the track structure function of rail joints generally, are designed to arrest the flow of electric current from rail to rail, as at the end of a track circuit, by means of non-conducting insula-

tion so placed as to separate the rail ends and other metal parts. The use of continuous welded rail obviates the necessity of many traditional rail joints but insulated joints cannot be welded. Accordingly, a process was developed to glue rigidly together, with epoxy resin glues, rail ends that cannot be welded because of the intervening insulation. Carrier introduced this process on a production basis at Barboursville May 1972 and thereafter has used maintenance of way personnel to prepare the rail and assemble these insulated joints, using a kit supplied by an outside manufacturer consisting of prefitted steel bars to which insulation has been molded by the manufacturer, end post, rail bolts and glue. Once assembled these joints are forwarded to signal employees for testing and painting. Petitioner herein contends that fabrication of these joints by other than signal forces, as described supra, is in violation of the current Signalmen's Agreement. It should be noted that the Brotherhood of Maintenance of Way Employees has been provided Third party notice and has presented its position on the record for our consideration.

At the outset, Carrier raised a procedural objection to our adjudication of this claim on the ground that the original claim on the property listed as claimants three (3) senior furloughed signal employees but was noticed to this Board for four (4) such claimants. Carrier cited numerous Awards on the proposition that we will not consider substantive amendments or alterations to the claim subsequent to its presentation on the property. We concur with the validity of this general principle but hold it is not controlling in the circumstances of the instant claim. The claim herein is the same in all material respects ie, gravamen, location, dates, etc.; and the alleged amendment goes only to the disposition or allocation of damages, if any, without any compounding effect thereon. Moreover, the record indicates notification to Carrier in upper level handling on the property of the addition of the fourth name, without protest from Carrier. Finally the record is devoid of any scienter or intent to deceive by Petitioner. In all of the foregoing we must conclude that no material change prejudicial to Carrier nor sufficient to divest us of jurisdiction is shown herein and therefore Carrier's motion to dismiss is denied.

The record indicates that for many years the Barboursville Reclamation Plant has reclaimed standard insulated rail joints for reuse in traditional track structure. Notwithstanding mutual objections by the parties regarding evidentiary submissions, we are satisfied that the record establishes that signal and maintenance of way forces each participate in such reclamation and reinstallation as follows: 1) In the shop: Maintenance of Way forces sort, clean and deliver incoming used insulated rail joints to signal employees

who thereupon inspect and pre-assemble the joint bars and insulation around wooden blocks to comprise a set for shipment to the field for final assembly and installation; 2) In the field: Maintenance of Way forces apply the insulated joints to the rail and signal employees inspect and test such joints, making sure they are properly applied. It is important to note that the final application of the insulated joint to the track is made by the Maintenance of Way employees but that testing, inspection and observation of proper installation is the responsibility of the Signal employee.

It should be stated that Petitioner disavows any claims to any part of rails, necessary drilling and/or hardening of rail ends. However, Petitioner argues that the history of reclamation work at Barboursville described supra, in light of the Scope Rule of the Signalmen's Agreement reserves the fabrication of the insulated joints by the epoxy resin process to employees it represents. Moreover, Petitioner contends that Carrier assigned the fabrication of some such joints to Signal Department employees in 1970 and was bound thereby to continue such assignment thereafter. Carrier maintains that the epoxy process is a new process not contemplated or reserved by the Scope Rule; that the reclamation work is different in kind from the epoxy process and therefore not determinative; that the 1970 assignment to Signal forces was for experimental prototypes and not binding in futuro for production processes; and, that its work allocation is consistent with practice and Agreement provisions regarding the joint roles of Signal and Maintenance employees in connection with insulated rail joints. The Brotherhood of Maintenance of Way Employees contends basically that the assembly and installation of track joints whether insulated or not is track structure work and belongs to Maintenance of Way forces; citing in support thereof the Scope and Classification Rules of the Maintenance of Way Agreement, as well as past practice and arbitration awards.

Careful consideration of the applicable Agreement language, the positions of the parties and the record as a whole impels us to find:

1) The Scope Rule relied upon by Petitioner does not reserve expressly, by necessary implication, or by informed construction the claimed work on epoxy fabricated insulated joints for welded rail - - a new process not contemplated at the time of its negotiation.

2) The past practice of reclamation and final application through a two-step procedure in the shop and in the field does not establish an exclusive reservation to Signal forces of the new one-step process whereby a finished, final and permanent application is obtained in the shop by gluing to ribbon rail.

3) The 1970 allocation of prototype assembly to Signal forces is significant but is not alone of sufficient probative value to carry Petitioners burden of proving exclusivity by custom and practice.

4) The respective Agreements and practices shown on the record suggest a shared responsibility of the Signal and Maintenance of Way forces with respect to the assembly, installation and inspection of the epoxy-resin insulated rail joints as follows:

- a) Maintenance of Way forces affect final application to the rail of the insulated joints.
- b) Signal forces are responsible for testing, inspection and observation that application is properly accomplished.

Guided by the foregoing, we must conclude that assignment of the fabrication of epoxy-resin insulated rail joints for continuous rail, - - a new process whereby the joints are finally and permanently affixed to the rail - - to Maintenance of Way forces was not in itself a violation of the Signalmen's Agreement and did not constitute removal of work reserved to Signal employees, as contended by Petitioner. We are unable to find in this particular record evidence of a derogation or removal from Signal employees of their duties of inspection, testing and observation of the proper application of the epoxy-resin insulated rail joints. Accordingly, we are constrained to dismiss 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 Employee 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.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls

Dated at Chicago, Illinois, this 17th day of April 1975.