

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22278
Docket Number SG-22303

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Toledo, Peoria & Western Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Toledo, Peoria & Western Railroad Company:

On behalf of Signal Maintainer Kenneth C. Carl for 2.67 hours at the overtime rate account not being called the night of May 2, 1977, to change radios on units 1000 and 902 (work was performed by TP&W train crew)."

OPINION OF BOARD: On April 1, 1976, this Carrier acquired from the estate of the Penn Central Corporation approximately fifty-five (55) miles of main line and other trackage from Effner, Indiana to Kenneth, Indiana. Also included in this package was trackage rights over the newly formed Consolidated Rail Corporation from Kenneth, Indiana to Logansport, Indiana, approximately six (6) miles. Both acquisitions were made pursuant to the Regional Rail Reorganization Act of 1973.

Carrier and Conrail entered into an agreement conveying the property and granting the joint trackage rights agreement. Among the matters germane to the facts of this case is that Conrail agreed to perform necessary servicing and running repairs to Carrier's locomotives and cabooses while they were on Conrail's property at Logansport.

On May 2, 1977, the claim date, radios on TP&W locomotives 1000 and 902 were defective and changed at Logansport. However, contrary to the terms of the operating agreement, Carrier's own train crews changed out the radios on these two locomotives. A claim was filed by the Signalmen's Organization, and it is before us.

Petitioner argues that Carrier could not enter into an agreement which would remove this work from the scope of the agreement, and argues that previously, Carrier has sent TP&W signalmen onto the

property of Conrail to perform this work. Carrier, while not denying this has happened, argues that notwithstanding the foregoing, the joint agreement with Conrail makes this work of Conrail employees. However, Carrier does not argue that when work of this nature is performed on their own property, the work does not belong to Signalmen.

This Board has oftentimes looked with approval at such joint operating and joint facilities agreements and arrangements, recognizing that the owning railroad has the right to insist that work being performed on their property should be performed by their employees and not the employees of the visiting railroad. We see nothing wrong with the Agreement entered into here, and note the following findings of Award 407 of Special Board of Adjustment 570:

"The evidence in the record shows, without serious contradiction, that it has been an operating practice not only between the C&O and B&O, but in the industry generally, that necessary running repairs are performed by the carrier on whose property the equipment is being operated."

In this case, however, the problem is that notwithstanding Conrail's contractual right to perform the work, it was performed by employees of Respondent Carrier. Since there was no dispute that if work of this nature is performed by the TP&W, it is performed by Signalmen, we must conclude that, as Petitioner has pointed out, it should have been performed by Claimant. We therefore find that, under these unusual facts and circumstances, Claimant's contractual rights were violated and we will sustain 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 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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1979.