

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35008
Docket No. SG-31756
00-3-94-3-24**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):

Claim on behalf of R.D. Cook and T.G. Adams for payment of 80 hours each at their respective time and one-half rates, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized employees not covered by the Signalmen’s Agreement to perform the covered work of installing radios, modems, power supplies, antennas and other appurtenances used in the operation of the signal system at various locations in Nebraska between October 13 and October 28, 1992, and denied the Claimants the opportunity to perform this work. Carrier’s File No. SI 93-02-18A. General Chairman’s File No. D-6-93. BRS File Case No. 9263-BN”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of the dispute, filed a Submission with the Board, and appeared at the Referee Hearing.

This dispute involves the Organization's claim that the Carrier utilized employees not covered by the Signalmen's Agreement to install centralized traffic control ("CTC") equipment in and around signal bungalows at various locations in eastern Nebraska.¹ The installed equipment included radios, antennas, modems, power supply equipment, cables and other appurtenances. The Carrier asserts that the radios and ancillary equipment of the kind at issue here were properly installed by the Communications Department employees represented by the IBEW, who the Carrier asserts have always installed and maintained such equipment.

The Organization maintains that the only function of the installed equipment has been to transmit and receive CTC signal codes between the signal control point and the Carrier's microwave system. It argues that because the sole purpose of the equipment is to transmit and receive information used to operate the Carrier's signal system, the work of installing the equipment belonged exclusively to Signalmen. According to the Organization, the new equipment simply replaced the older wire-based CTC equipment and accomplishes the same function by means of a different technology.

It is not relevant, the Organization argues, that the replacement equipment is based on radio technology. Rather, the pertinent inquiry is the purpose of the equipment, which, according to the Organization, is solely for the operation of the signal system. Thus, it argues, the installation of the system properly should have been assigned to Signalmen under the Scope provision of the Agreement.

The Carrier, on the other hand, insists that its assignment of the installation work to communication department employees represented by the IBEW did not

¹ The Scope provision of the Agreement between the Carrier and the Organization provides that the Agreement governs "the rates of pay, hours of service and working conditions of all employees engaged in . . . installation [of] . . . signal systems, traffic control systems [and] [a]ll appurtenances, devices and equipment used in connection with [those] systems . . . regardless of where located and how operated"

violate the Agreement. It denies that the use of radios in this instance constituted a change in technology, since radio installations have always been performed by members of the IBEW. It insists that such work is properly the IBEW's by Classification of Work, Scope, and practice, when performed by the Carrier's employees. The Carrier argues that the radios and ancillary equipment in this case receive multiple transmissions and it is the wayside interface units - installed and maintained by Signal Department employees - that has the sole function of extracting CTC code information.

The Carrier further argues that the damages claimed by the Organization, here 80 hours for each Claimant, should not be awarded. According to the Carrier, each Claimant worked and was compensated during the entire period covered by the claim, and therefore suffered no loss of earnings. The Carrier maintains that an award of compensation would therefore amount to payment of punitive damages which are not available under the Agreement.

The IBEW asks that the Board deny the claim on the grounds the work in question was correctly assigned to its Communication Workers in accordance with its Agreement with the Carrier. According to the IBEW, the installation of the radios, modems, power supplies, shelving and brackets, and coaxial cables involved in this case were part of a microwave system. The IBEW maintains that the Signalmen's Agreement does not cover multiplexing equipment used with microwave, and that such work is expressly reserved for the Communication Department employees under applicable work rules.

Further, the IBEW asserts, multi-functional, two-way radio and associated equipment carrying voice communications, data, signal code and information, etc., since its introduction on the property, has been installed and maintained by the Communication Department employees. The IBEW submits that this assignment of work is consistent with Paragraph J of the Signalmen's Scope Rule, which provides:

"J. When signal circuits are handled on communications systems of other departments, the employee covered by this Agreement shall install and maintain the signal circuits leading to and from common terminals where signal circuits are connected with other circuits."

According to the IBEW, it is only outside of the modem that the system exclusively becomes a signal system.

After reviewing the record evidence, the Board finds that the present use of equipment involved in this dispute is solely the transmission and reception of information used to operate the Carrier's signal system. Accordingly, the work of installing and maintaining the equipment belongs to Signalmen until that use has changed.

That this case is about highly sophisticated and complex technology must not obscure the fact that the dispute is one which is governed by settled contractual principles and Board precedents. The focus of our inquiry is not on the technology itself, but rather, the use of the technology. Under the Signalmen's Agreement Rule 1 - Scope, the subject equipment is used exclusively in connection with signal systems and traffic control systems, its installation and maintenance belongs to Signalmen, regardless of the technology. According to record evidence, the sole and specific function of the equipment is to receive and transmit CTC signal code and indications between the signal bungalows and the Carrier's microwave system. There simply is no evidence that the subject equipment has been used for the communications purposes which would require assignment of the work to IBEW represented employees.

We accept as true the Carrier's assertion that "[t]he radios and modems that were installed in the bungalows receive numerous transmissions that are not CTC related." That, however, does not change our analysis, for there is no evidence that the installed equipment processes those transmissions. Rather, according to record evidence, the sole purpose of the equipment, at present, is the operation of the Carrier's signal system. Absent evidence that the equipment is actually involved in the Carrier's non-CTC communications, we are convinced that its installation and maintenance must remain within the Signalmen's jurisdiction.

We thus disagree with the IBEW's claim that the Organization is seeking to expand its jurisdiction over work traditionally performed by the Carrier's Communication and Electrical Department employees. We agree with the Organization that this case must be decided upon the actual uses of the equipment, not its potential uses. We thus are not persuaded by the IBEW's assertions that "the referenced equipment also has the capability of two-way voice and data transmission between fixed locations and equipment in the field. Typical communications would be

with personnel on trains, motor vehicles, roadway equipment, etc. . . .” (Emphasis added.) Plainly, the IBEW is relying on the capabilities of the installed system, not its present function. There being no evidence that the signal circuits overlap with communications systems of other departments, we must grant the Organization’s claim.

Our ruling follows the recent Award of Public Law Board No. 5622 in Case 51 [NS (N&W) vs. BRS], a case decided under facts very similar to those present here. Noting that communications work falls outside the Signalmen’s Scope Rule “whenever there is at least one other form of communication simultaneously carried with signal data,” the Board sustained the Signalmen’s claim because the radio equipment that was installed to replace existing code line wires “was limited to serving exclusively as signals circuitry.” The Board noted, however, that “[i]f some other form of communication had been simultaneously carried on a regular basis within a reasonable time after the installation work was completed, our finding would have been different.” We agree with that analysis and incorporate it herein, and observe, further, that if the use of the subject equipment changes, then all further construction, reconditioning, installation, reclaiming, maintenance, repair, inspection or testing of the appurtenance, devices and equipment used in connection with the installed system shall accrue to the IBEW represented craft.

This Award follows the series of decisions of Public Law Board No. 4433 in Cases 42 and 43, cited in and affixed to the IBEW’s Submission. Those decisions, following Case 4 of Public Law Board No. 3622, hold that the mere use of radio communication technology for warning signal transmissions does not remove the signal system from the Signalmen’s jurisdiction. Those Awards further provide that when the signal system overlaps and is combined with a circuit handled by Communication Workers, however, the installation and maintenance work shall be performed by IBEW represented employees.

Thus, it is sufficient that the Signalmen established that the new radio-based system replaced the older code equipment and connecting line wires that were exclusively used for operation of the CTC signal system. This evidence is sufficient to establish an inference that the new technology merely replaced old equipment that was used exclusively to relay information through the signal system. This conclusion has not been rebutted.

Concerning remedy, we reject the Carrier's assertion that the claim, perforce, must be denied because neither Claimant suffered any loss of earnings. In proper cases a monetary remedy may well be appropriate. Nonetheless, the Organization still bears the burden of proof with respect to each element of its claim. Here, the evidence for a monetary remedy is wanting. Therefore, like Public Law Board No. 5622 in Award 51, we therefore make no compensatory award despite our finding that the Signalmen's Scope Rule was violated.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of September, 2000.

**LABOR MEMBER'S DISSENT
TO
AWARD 35008
DOCKET NO. SG-31756
(REFEREE SCHEINMAN)**

The Board, in its decision, went well beyond its authority of interpretation and application of the rules. As stated in this Organization's Third Party Response, the Brotherhood of Railroad Signalmen (BRS) were seeking to gain, through arbitration, that which they had not secured at the bargaining table. This palpably errored Award gave the BRS just that.

The rules which the Board was asked to review were clear and unambiguous. Rule 46 of the controlling Agreement, which governs the scope work performed by International Brotherhood of Electrical Workers (IBEW) Communications Department Employees is straight forward and explicit when it assigns the subject work to that craft and class of employees reading in part:

...

"Rule 46:

Communication Employees work will consist of inspecting, assembling, installing, disconnecting, repairing, building, rebuilding, maintaining, overhauling, adjusting, applying, wiring, winding, balancing, calibrating, stripping, aligning, cleaning, lubricating and testing of the following items and related apparatus of each: . . public radio broadcast transmitters and receivers; television transmitters, receivers, and recorders; carrier microwave and stationary and/or mobile radio transmitters, receivers and repeaters; . . . multiplexing equipment used with carrier or microwave and stationary and/or mobile radio transmitters, receivers and repeaters; . . .multiplexing equipment used with carrier or microwave; train communication systems; intratrain

communication systems; train dispatcher communication systems; centralized radio control equipment; . . ."

. . .

Just as explicit is the Signalmen's Scope Rule 1, paragraph J. which provides as follows:

. . .

"J. When signal circuits are handled on communication systems of other departments, the employees covered by this Agreement shall install and maintain the signal circuits leading to and from common terminals where signal circuits are connected without circuits."

While the Signalmen's Organization has alleged that the equipment installed by the IBEW forces is solely used for the signaling function which was previously provided by the code line wires is incorrect and obviously self-serving.

Just as obvious is the fact that the majority ignored the facts presented by the Carrier who advised the Board in part (Carrier's submission, page 3):

. . .

" In 1987, the Carrier began to install single channel radios. . . These single channel radios were the equivalent of multiple channel radios by virtue of digital technology. . . These radios transmitted CTC code information as well as other information over a signal channel. . ."

. . .

And again (Carrier submission, page 7):

" The Organization, in its initial claim, alleged that 'The sole and specific function of the equipment is to receive and transmit CTC Signal Code and Indications between the Signal Bungalows and the Microwave System' Their allegation is not correct. The radios and modems that were

installed in the bungalows receive numerous transmissions that are not CT related.”

...

Given the facts presented in the record the illogical rationale of Referee Scheinman is self-evident when the majority’s opinion stated in part (page 4):

...

“ We accept as true the Carrier’s assertion that ‘[t]he radios and modems that were installed in the bungalows receive numerous transmission that are not CTC related.’ That, however, does not change our analysis, that there is no evidence that the installed equipment processes those transmissions.”

It is incomprehensible that the majority would agree that the subject equipment receives information other than those that are CTC related but that this equipment does nothing with that received information. Common sense would dictate that if the installed equipment, subject in this dispute, is capable of and does receive other transmissions that this information would be processed and/or transmitted on. For what other reasons would the transmitted information be received?

Wayside Interface Units (WIU's) have replaced the control relays, which were part of the old CTC system. The WIU's are selective devices that extract the CTC code information. The installation and maintenance of the WIU's was performed and properly assigned to the Signalmen. However, that is the extent of what should have been the involvement of the BRS, since, and as the record establishes, the subject equipment was involved with more than the CTC communications.

Award Number 51 of Public Law Board 5622 cited by this Board as precedential is inappropriate. While the Award of Public Law Board 5622 is similar, it is not on point with the circumstances of this record.

The Brotherhood of Railroad Signalmen did not establish a *PRIMA FACIE* case. The decision of the Board is in error and of no presidential value whatsoever.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. R. Hurtubise", with a stylized flourish at the end.

Jean R. Hurtubise
NRAB Board Member, Third Party