

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railroad Signalmen
TO THE)
DISPUTE) and
)
) Union Pacific Railroad Company

QUESTION AT ISSUE:

Is Carrier's use of non-covered employees to perform work covered by the Signalmen's Agreement considered a "transfer of work" as that term is used in Article III, Section 1 of the February 7, 1965 Agreement?

**OPINION OF
THE BOARD:**

THE BOARD: In February and April, 1991, the Organization initiated claims contending that Carrier violated the scope rule because it purportedly assigned the inspection, testing and repair of end-of-train (EOT) devices to employees not covered by the applicable Signalmen's Agreement. On the property, the Carrier raised several substantive defenses and one procedural defense. From a substantive standpoint, the Carrier countered that 1.) the class and craft of Signalmen had never performed the disputed work especially the repair of the microprocessor digital electronic boards in the EOT devices; 2.) the disputed work was previously performed by non-Carrier employees; 3.) upon the acquisition of specialized equipment, the work was properly assigned to communication department employees represented by the International Brotherhood of Electrical Workers (IBEW) at Council Bluffs, Iowa; and, 4.) at the two shops staffed

by communication technicians represented by the Organization, these employees continue to repair EOT devices by replacing defective components with rebuilt or new parts.¹

The Carrier's procedural defense was that it had engaged in a transfer of work pursuant to an operational change and thus, any controversy had to be submitted to this Board which has exclusive jurisdiction to interpret and apply the February 7, 1965 Job Stabilization Agreement.² More specifically, the Carrier argued that it was operationally feasible to transfer all microprocessor digital electronic board repair work into the Council Bluffs Shop, the sole location of specialized equipment and employees with the requisite skills to accomplish the work. The Carrier also concluded that an implementing agreement pursuant to Article III was unnecessary inasmuch as no signal employees were adversely affected by the transfer of work.

The Organization progressed the alleged scope rule violation claims to Public Law Board No. 4716. In June, 1994, the Public Law Board deferred any decision on the merits until this Board could determine whether or not it had primary and exclusive jurisdiction over the dispute. [See *Public Law Board No. 4716, Award No. 52 (Wesman)*.] As a result, the Organization presented the Question at Issue to this Board.

¹ The Carrier also contended that the Signalmen did not prove an exclusive right to perform the disputed work inasmuch as only communication employees on the former Texas and Pacific and Chicago and Eastern Illinois territories are represented by the Organization herein. Employees who inspect, test and repair EOT devices at the other shops are represented by the IBEW.

² Although the Carrier clearly contends that it implemented a transfer of work pursuant to an operational change as specified in Article III, Section 1 of the February 7, 1965 Job Stabilization Agreement, the record does not contain any notice from the Carrier, at the time it assigned the work to Council Bluffs communication technicians, that it was invoking its rights under the Job Stabilization Agreement.

Article III, Section 1 permits the Carrier to introduce and implement technological, operational and organizational changes. The first sentence of Article III, Section 1 clearly ties the Carrier's right to transfer work to a technological, operational or organizational change. To trigger our jurisdiction, the transfer of work must constitute or be associated with one or more of these three types of changes. While the drafters of the February 7, 1965 Job Stabilization Agreement did not precisely define these three types of changes, Article III certainly contemplates that an operational change constitutes something more than the mere assignment of a specific task to a group of employees. In this case, the Carrier simply assigned the work of repairing the microprocessor digital electronic boards to employees represented by the IBEW at Council Bluffs. The Carrier did not adequately articulate how this mere assignment of work was associated with an operational change. Also, the acquisition of specialized equipment, standing alone, is not tantamount to a change of the magnitude contemplated by Article III of the February 7, 1965 Agreement.

The Carrier cannot contend that every assignment of work is a transfer of work emanating from an operational change. There is no evidence in the record of a revamping of systems or a change in work flow or some other alteration of the method of accomplishing EOT repair work.

This Board need not definitively define what activities constitute technological, operational or organizational change. We narrowly hold that the record before us does not contain sufficient evidence of such a change.

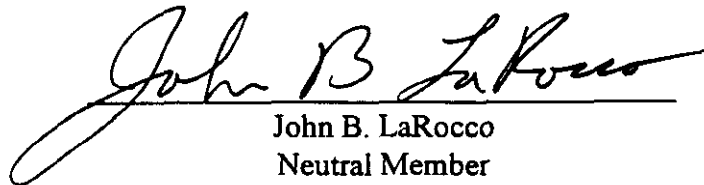
AWARD NO. 504
CASE NO. SG-46-W

Since the record does not contain sufficient evidence that the Carrier engaged in a technological, operational or organizational change, this Board lacks jurisdiction to adjudicate this dispute.

AWARD

The Answer to the Question at Issue is No.

Dated: September 24, 1996


John B. LaRocco
Neutral Member