AWARD NO. 503-B
CASE NO. SG-45-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Brotherhood of Railroad Signalmen

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: On May 2, 1991, the Carrier tendered the Organization with written notice of its intent to transfer work consisting of the wiring of six signal equipment houses from the Signal Shop at Pocatello, Idaho, to the Sedalia, Missouri Signal Shop. The Carrier cited Article III, Section 2 of the February 7, 1965 Job Stabilization Agreement in its notice. The Carrier explained that Signal employees at the Pocatello Shop were burdened with an excess workload while the Sedalia Shop had unused capacity. Thus, the Carrier sought to equalize the workload between the two shops so that it could more quickly accomplish the wiring work.

The Pocatello Shop is located on the original Union Pacific while the Sedalia Shop is located on the former Missouri Pacific Railroad territory. The Organization represents employees at both shops although employees on the Missouri Pacific are covered by a schedule agreement separate from Signal employees on the Union Pacific.

[Note to JBL: Earlier I have to add that the wiring work was performed by Sedalia Shop employees from August 5 through August 8, 1991.]

Contending that the Carrier violated the applicable scope rule, the Organization initiated and progressed a claim to the National Railroad Adjustment Board (NRAB) Third Division.[1] At the NRAB, the Carrier argued that this Disputes Committee had exclusive jurisdiction to adjudicate the claim. In *NRAB Third Division Award No. 30722 (Wesman)*, the NRAB deferred any ruling on the claim until this Disputes Committee could first ascertain whether it had primary and exclusive jurisdiction over the dispute. In *Award No. 30722*, the Board wrote:

> The instant claim involves invocation by Carrier of the February 7, 1965 Mediation Agreement between the Parties. It is not a case of first impression. Similar claims were presented in Awards 52 and 56 A, B, & C, on Public Law Board No. 4716, involving these same parties. Nothing in this case distinguishes it from the prior cases. In Award 52 the Board held:
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> > While prompt resolution of disputes before Public Law Boards is the ultimate goal, such resolution may not be made at the expense of adherence to proper procedural and jurisdictional considerations. Accordingly, the Board finds that, until the ancillary dispute over the Parties' interpretation of the February 7, 1965 Agreement is resolved, we must defer to the procedures described in 'Article VII - Disputes Committee' of that Agreement. Should this matter return to the Board once the Disputes Committee's decision has been rendered, the Board will. . . .proceed with a determination of the merits of the case under the current Agreement between the Parties.

This Board has exclusive jurisdiction to adjudicate the dispute if the Carrier's transfer of the wiring work constituted or was associated with an operational, technological or organizational change as specified in Article III, Section 1 of the February 7, 1965 Agreement. The first sentence

[1] It is difficult to conceptualize the existence of any scope rule violation when the work in dispute was performed by covered employees represented by the Organization.

of Article III, Section 1 clearly ties the Carrier's right to transfer work to a technological, operational or organizational change. Sections 1 and 2 of Article III of the February 7, 1965 Agreement read:

> Section 1
>
> The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements.
>
> Section 1
>
> Except as provided in Section 3 hereof, the carrier shall give at least 60 days' (90 days in cases that will require a change of an employee's residence) written notice to the organization involved of any intended change or changes referred to in Section 1 of this Article whenever such intended change or changes are of such a nature as to require an implementing agreement as provided in said Section 1. Such notice shall contain a full and adequate statment [sic] of the proposed change or changes, including an estimate of the number of employees that will be affected by the intended change or changes. Any change covered by such notice which is not made within a reasonable time following the service of the notice, when all of the relevant circumstances are considered, shall not be made by the carrier except after again complying with the requirements of this Section 2.

Upon careful consideration, this Board finds that the transfer of wiring work involving just six signal equipment houses from one signal shop to another signal shop on the same merged system does not constitute an operational or organizational change within the meaning of Article III, Section 1 of the February 7, 1965 Agreement. Instead, the subject matter of this case is more properly

characterized as a possible scope rule violation governed by the provisions in the applicable working agreements.

While the parties to the February 7, 1965 Agreement did not precisely define the meaning of an operational change (or for that matter, a technological or organizational change), a change in operation inherently connotes an alteration more integral to how work is performed than the transfer of a modicum of work from one signal shop to another. In this case, the manner of performing the wiring work did not change and there was no change in how either shop operated. Moreover, the record indicates that the Carrier simple reassigned certain work based upon the unused productive capacity at the Sedalia Shop. All of these circumstances strongly suggest that the Carrier's activity was not predicated on an operational or an organizational change.

This Board stresses that it need not definitively define what activity constitutes technological, organizational or operational changes. We narrowly hold that evidence or any such change is not contained within this particular record.

Therefore, this Board lacks jurisdiction to adjudicate the claim.

AWARD

The Answer to the Question at Issue is No.

Dated: September 24, 1996

John B. LaRocco
Neutral Member

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