



Award No. 5939

Docket No. 5834

2-IC-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 99,
RAILWAY EMPLOYES' DEPARTMENT, A.F.L.-C.I.O.
(ELECTRICAL WORKERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement on the Southern Lines, beginning April 18, 1967, and continuing through April, May, June, July, August, September, October, November and December, 1967 and January, 1968, when it allowed Western Union Employees, other than Electrical Workers covered by the Agreement, to come on the Illinois Central Railroad Company property and take down line wire off the Carrier's owned pole lines.
2. That accordingly, the Carrier be ordered to additionally compensate the Electrical Workers (Section Linemen) listed below at the pro rata rate for all hours worked, or in the amount of money enjoyed by the Western Union Employees, performing this work up to the date the violation is corrected, as this is a continuing claim:

| | |
|----------------|---------------|
| R. C. Morris | W. D. Bell |
| C. E. Richards | W. E. Turner |
| M. Richards | E. W. Hawkins |
| H. H. Williams | D. K. Powell |

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad company, hereinafter referred to as the carrier, has an agreement with the electrical workers (section linemen) of System Federation No. 99, hereinafter referred to as the claimants, which has been in effect since April 1, 1935. The claimants hold seniority under this agreement and are listed on the Communications Department Southern Lines Seniority Roster.

The claimants' duties are to perform all work coming under the special rules classification of electricians and/or linemen and all other work properly recognized as electricians' work on the carrier's Southern Lines.

That on April 18, 1967, workers employed by the Western Union Company arrived on the carrier's Southern Lines property and began taking down communication line wire off the carrier's owned pole lines. These workers employed by Western Union Company are not covered by the Agreement be-

erty, following the sale, the purchase may also elect to use his own employees to pack and remove them in a prescribed manner. Petitioner's right to the work does not extend beyond the point where a purchaser assumes title. There is nothing in Petitioner's Agreement which insures that purchasers will always handle their scrap in a certain way. It may well be that REA employees are entitled to do the handling and moving whenever such work is not performed by employees of a purchaser. But it has no justifiable claim to do work on a purchaser's property which the purchaser wants to do himself."

See also Award 3-3626 and 3-12023.

CONCLUSION: The Company has shown that the work involved in this dispute was not work exclusively reserved to the brotherhood of electrical workers by virtue of the classification of work rule or otherwise. Western Union merely removed its own property from the poles of the Illinois Central Railroad. No proper basis for the claim exists and the Board should dismiss or deny the claim.

FINDINGS: The Second 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 waived right of appearance at hearing thereon.

In this dispute involving the question as to whether or not Carrier violated the Agreement when it permitted Western Union Company employees to remove communication line wires from Carrier's pole lines, Carrier raises a procedural objection that the proper forum for the handling of this dispute is Special Board of Adjustment No. 570 as provided by Article II, Sections 1 and 8 of the September 25, 1964 Agreement governing the parties to this dispute.

The Organization objects to Carrier raising said procedural defect at this time, claiming that it was not on the property and therefore it cannot be considered by this Board. It has been held that a "jurisdictional" issue may be considered by this Board at any time during the proceedings. See Third Division Award 16786.

In view of the fact that the issue before this Board for determination involves subcontracting out of work and inasmuch as Section 8 of Article II of the September 25, 1964 Agreement clearly gives "exclusive" jurisdiction over such disputes as involved herein to a Shop Craft Special Board of Adjustment, namely Special board of Adjustment No. 570, we are compelled to dismiss this claim without prejudice for want of jurisdiction.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May, 1970.