



Award No. 5941

Docket No. 5835

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 Tuesday, November 14, 1967, at Markham Locomotive Roundhouse, Chicago, Illinois, when it allowed Illinois Bell Telephone Company employes, not subject to the current agreement, to perform Electrical Workers' work covered by the Scope of Agreement.
2. That, accordingly, the Carrier be ordered to additionally compensate Electrician C. F. Thorne and Electrician Helper F. G. Dehning each at the pro rata rate for the number of hours enjoyed by the Illinois Bell Telephone Company employes, or for four (4) hours each at the pro rata rate.

EMPLOYES' STATEMENT OF FACTS: That on Tuesday, November 14, 1967, the Illinois Central Railroad Company, hereinafter referred to as the carrier, allowed employes of the Illinois Bell Telephone Company to come on its property at Markham locomotive roundhouse and install a 117 Volt pole line from the load side of the fuse box to an amplifier in the PBX room of the Administration Building in Markham Yard. This installation consisted of installing a toggle switch, making connections on said toggle switch and also in a fuse box, and installing around thirty (30) feet of BX armored cable.

Electrician C. F. Thorne and Electrician Helper F. G. Dehning, hereinafter referred to as the claimants, were working and on their regular shift at Markham on Tuesday, November 14, 1967, and witnessed Illinois Bell Telephone Company employes performing electrical work covered by the Scope of agreement.

The claimants in this case are employed by this carrier and are listed on the electrical workers' seniority rosters at Markham locomotive roundhouse.

Claimants' duties are to perform all work coming under the special rules classification of electricians and their helpers and all other work generally recognized as electricians' work at Markham locomotive roundhouse.

of such awards, however, apply to situations where no employee at all suffered damages by reason of the contract violation. It may very well be that it is justifiable to assess punitive damages where the Carrier deliberately, willfully or maliciously violated the terms of the contract. In such a case, an employee not directly damaged may file a claim and collect for such contract violation. But this is not the case here.

...

It is a fundamental principle of law that damages for a breach of contract is the amount which the Claimant actually suffered by reason of such a breach. Consequently an employee wrongfully discharged is entitled to the amount he would have earned if he had not been so wrongfully discharged. See Award 1638 (Carter) Second Division. In Award 8673 (Vokoun) this Board said:

... In the assessment of penalties the usual penalties are based on losses to individuals who are caused monetary loss because of a contractual violation, in order to make one 'whole.' Punitive damages are not ordinarily approved by the Board.

Also see Awards 3651 (Miller), 5186 (Boyd), 7309 (Rader) and 8674 (Vokoun).

We cannot see how it will benefit the relationship between the Organization and the Carrier and effectuate the purpose of the Agreement to assess punitive damages on the evidence contained in the record."

Therefore, in consideration of the evidence before the board in the instant case, no damages can be shown nor penalties awarded. Referee Dolnick's statement of the applicable principle should be regarded as controlling and the claim should be denied.

CONCLUSION: The union claims that the agreement was violated when the company permitted the Illinois Bell Telephone Company to wire their own property located on Illinois Central Railroad property. The rules cited by the union in support of this claim do not apply to the installation of wiring on equipment not the property of the company.

There is no basis for this claim. The union has not proven its assertions in any substantive manner that the agreement has been violated. No violation exists inasmuch as the wiring was for the benefit of the telephone company and was performed without specific permission from the company. Moreover, the claimants sustained no monetary loss or hardship as a result of the alleged violation. In fact, the penalty claimed is a windfall in view of the smallness of the alleged infraction compared to the size of the entire project of which it was a part and the little time which was actually consumed in the face of the time claimed by the union. The length and size of the operation has not been contested by the organization.

The company asks the board to dismiss the claim because it does not have jurisdiction. If the claim were properly before the board, it should be denied.

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.

This dispute arose as a result of Illinois Bell Telephone Company employees being permitted by Carrier to install a new switchboard on Carrier's Chicago Terminal at Markham, Illinois.

Carrier raises a jurisdictional question, claiming that the proper forum for the handling of this dispute is Special Board of Adjustment No. 570, and bases said contention on the provisions of Article II, Sections 1 and 8 of the September 25, 1964 Agreement.

We reject the Organization's position that inasmuch as Carrier did not raise this contention on the property, we cannot now consider it at this time. This Board has held that the "jurisdiction" of this Board may be considered at any time during the proceedings. See Third Division Award 16786.

In view of the fact that this dispute involves a question as to the right of Carrier to subcontract out the work in question, and inasmuch as Article II, Sections 1 and 8 of the September 25, 1964 Agreement give "exclusive" jurisdiction to a Shop Craft Special Board of Adjustment, namely Special Board of Adjustment No. 570, so created to hear such disputes, 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.