

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the procedural provisions of Rule 27 (a) of the Communications Agreement effective August 1, 1977 by failing to decline the Local Chairman's claim timely filed February 17, 1979.
2. That the Missouri Pacific Railroad Company violated Rules 1 and 24 (a) of the Communications Agreement effective August 1, 1977; Article III of the September 25, 1964 Agreement when they assigned Signal Foreman Steve Liebe and Signalmen Guy Brown and A. Helm to perform Communications Maintainers' work in that they disconnected the aerial telephone drop from atop the pole line and from the telephone booth, buried (relocated) the aerial telephone drop underground reconnecting said aerial telephone drop to the telephone booth and atop the pole line, thereby, depriving Communications Maintainer Wayman Hawkins at Chester, Illinois and Communications Maintainers Gary Rice and Ciro Legamaro at St. Louis, Missouri of their contractual rights to said work at the Kellogg Lead, Flinton, Illinois on December 22, 1978.
3. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Communications Maintainers Wayman Hawkins, Gary Rice, and Ciro Legamaro eight (8) hours at time and one-half rate for December 22, 1978.

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.

The Organization asserts that although Communications Maintainers initially installed certain telephone drops, the Carrier used Signal forces to relocate said drops, and in doing so, the Signal forces disconnected the drop from the pole line and telephone booth, buried the drop underground and reconnected the drop to a booth and pole line.

The Employees insist that the Carrier's action violates that portion of the Scope Rule which mentions employees in the Communications Department engaged in construction, installation, maintenance repairs, etc., of telephone and telegraph transmission and switching systems and associated equipment.

We have noted the various contentions of the parties concerning the fact that two claims were filed in this instance. We do not take that as attempting to pyramid claims; but rather (because of certain confusion as to the appropriate party to submit claims to) a recognition that the Employees were from different areas. At the same time, we hesitate to rule that the fact that only one of the matters was progressed amounts to a forfeiture. Accordingly, we will decide the case on its merits.

We have noted certain contentions which suggest that the Carrier utilized the most economic means of having the work performed. However, economics itself does not justify an action if that action is a violation of the agreement. We have also seen reference to the assertion that Signal gangs have performed this type of work in the past.

As we view the Scope Agreement, it appears to be rather specific and directly to the point; and accordingly, we are inclined to rule that the Carrier permitted employees other than those covered by the bargaining unit to perform work reserved by the Scope Rule, and we will sustain the claim. We find no basis, however, in the record to justify payment at the premium rate, and instead we will sustain the claim at the pro rata rate.


A W A R D

Claim sustained in accordance with the Findings, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of March, 1982.