

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Soo Line Railroad Company

STATEMENT OF CLAIM:

1. That the Soo Line Railroad Company violated the current agreement, particularly Rule 2, when it assigned Electronic Engineer G. A. King, and Telex personnel, on April 16, 17, 18, 20, 21, 22, 23, and 24, 1986 to perform repair and maintenance work on the communications switchboard on the nineteenth floor of the Soo Line Building.

2. That accordingly, the Soo Line Railroad Company should be ordered to compensate the Claimant, M. A. Kahl, for thirty-six (36) hours at the rate of time and one-half.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 claimed a violation of Rule #2 when the Carrier assigned the Supervisory Engineer and an outside contractor to repair and test a switchboard at the Carrier's Soo Line building located in Minneapolis, Minnesota. Rule #2 is reproduced below:

"These rules shall apply to and govern the employment, hours of service, working conditions and compensation of all employees in the Communications Department, below the rank of Assistant Engineer Electronics Communications, except that they shall not apply to Draftsmen or clerical employees.

The work of the employees covered by this Agreement shall consist of all assembling, installing, removing, dismantling, connecting, disconnection, repairing, rebuilding, maintaining, overhauling, adjusting, applying, wiring, calibrating, aligning, stripping, cleaning, lubricating, and testing of all telephone, telegraph, communication switchboards, inter-office communications systems, public address,

talk back, and paging systems; carrier systems and equipment including carrier transmitter, receivers, repeaters, multiplexing and related equipment used for communication or control, telephone dial switching equipment, radio transmitter, receivers and related equipment used for communication or control, hot box and dragging equipment detectors; closed circuit television camera, receivers and recorders; 'data' sets and transmission circuit; wires, cables, conduit, and antennas used for above equipment."

The Organization claimed that Rule #2 is clear and since there was a lost opportunity for work, the claim of 36 hours at time and one-half is appropriate, and the Organization cited a number of awards to bolster their position. The Organization noted their members are now doing the work and, therefore, the Carrier concedes that the work belongs to the International Brotherhood of Electrical Workers members. Since it is undisputed on the property that a supervisor performed the work, the Organization claimed its claim should be upheld in its entirety.

The Board noted that the ARASA was notified for a response to the matter in this docket. The Organization declined to intervene and file a submission as noted in their response dated January 12, 1988.

The Carrier argued that the IBEW members are supervised by an electronic engineer. The work was corrective testing on a new system and new installation that was installed initially by the contractor which was the Telex Corporation. The Carrier argued that the supervisor may assist the contractor to work out the problems from the original installation. The Soo Line is obligated by contract with Telex, and the Carrier noted the Organization's members assisted where applicable. The Carrier further contended that its employees had no expertise in order to correct this problem and, in any event, the work is not exclusive to the IBEW. The Carrier stated that, through its Exhibit A, it gave notice on February 13, 1986 in accordance with Article II of the September 25, 1964 Agreement that it intended to subcontract the work in question; and since the Organization did not respond within ten days, the Carrier had the right to subcontract the work.

The Board finds that Rule #2 cited above placed the testing of all communication switchboards under the jurisdiction of the Organization. There is no showing that any other organization could claim this work under their scope rule. The Carrier raised arguments with respect to Article II - Subcontracting, which is part of the September 25, 1964 Agreement. This Agreement provides for the right to subcontract work when skilled manpower or essential equipment is not available on the property. It is apparent from the record that the type of work in question, that is the troubleshooting of the new switchboard installation, was outside of the skill level of the IBEW members that the Carrier had available to it. The Carrier argued that in accordance with this Agreement, they informed the General Chairman of the pending subcontract at which time the Organization would have ten days in which to respond. This letter was dated February 13, 1986. What the Carrier fails to note is that the work referred to in the letter was on a new switchboard located at the Miller Davis Building.

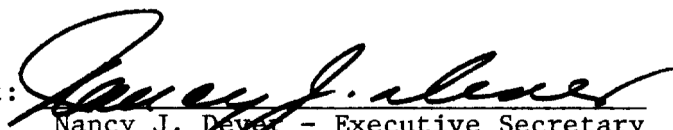
The work in question in this docket is work that was performed at the Soo Line Building. Therefore, the Carrier fails in its contention that the Organization was properly informed of the subcontract as required in Article II of the 1964 Agreement. Contractual agreements between the Carrier and their subcontractor do not offer a valid defense to a Controlling Agreement violation. Since the work properly belongs to the Organization unless proper notice was given, the Organization will prevail in their claim. However the Board feels the appropriate remedy would be 36 hours to the Claimant at the pro rata rate.

A W A R D

Claim sustained in accordance with the **Findings**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of December 1988.