

Award No. 3133

Docket No. 2917

2-IC-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That employes of the Telephone and Communications Department were unjustly damaged when other than employes covered by the current agreement between the Illinois Central Railroad Company and System Federation No. 99 were used to install and maintain an intercommunication system in the Freight House, Memphis, Tennessee commencing July 3, 1956.

2. That the following named employes of the Telephone and Communications Department be compensated equally at their applicable time and one-half rate for each man hour worked by other than Telephone and Communications Department employes:

W. A. Stahl
C. W. Terrell

J. W. Martin
E. P. Gregory

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Company, hereinafter referred to as the carrier, contracted with the Southern Bell Telephone Company for the installation and maintenance of an intercommunication system in the freight house, Memphis, Tenn.

The intercommunication system involved consists of master sets, microphone and amplifier sets, wiring and installation of junction boxes, cable installation and power back system.

The employes named in the above claim of employes, hereinafter referred to as the claimants, are employed in the Telephone and Communication Department of the carrier, and hold seniority as electricians on the Southern Lines, under the provisions of the current agreement.

ants have worked every day that they were available to work. They lost no time by reason of this installation. It is not a fact that they were damaged as claimed. They have lost no time or work and have no justifiable claim for work allegedly lost at the penalty rate.

The fundamental issue in this case is whether the carrier has bargained away its right to decide as a matter of financial policy whether it will lease a communications service or whether it will purchase its components piece by piece and have them assembled by its own forces. It is not enough to contend, as the organization does, that the kind of work here involved is covered by the classification of work rule. "No matter how broad or how general the terms of a contract, it will be extended only to those matters with reference to which the parties intended to contract." (Volume 17, Corpus Juris Sec., page 295, paragraph 693.) Carrier has shown in its original submission that it has telephone systems installed and maintained by the Bell Telephone Company at Chicago, New Orleans, Baton Rouge, McComb, Jackson, Memphis, Fulton, East St. Louis, and Waterloo. Other examples of leased facilities are also cited in carrier's original submission. The carrier has not contracted away its right to decide whether it will lease equipment or buy it. There is no basis for this claim and it should be denied.

In conclusion, the Labor Members of the Division filed the following brief in support of the employees' position:

The crux of this dispute is the carrier's action in assigning Electrical Workers' work to others than their electrical worker employes in violation of the current Section B agreement rules applicable to the instant dispute.

Prior to the installation of the inter-communication system involved in this dispute, an inter-communication system was in service in the Memphis, Tennessee Freight House. This system was installed and maintained by the carrier's electrical worker employes in the Telephone and Communication Department, who are claimants in the instant dispute, (See Employees Exhibit "A") and by their skill, training and long experience are capable of installing, repairing and maintaining all types of communication equipment.

The assignment of this installation and maintenance work to the Southern Bell Telephone Company violates the current Section B agreement, particularly Rules 33 and 54, and the claim of the employes must be sustained.

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 employe 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 were given due notice of hearing thereon.

Claim is advanced for four employes of the Telephone and Communications Department who were not used by carrier in the work of installing an intercommunication system at Memphis. Carrier defends on the ground that the equipment installed was the property of the Southern Bell Telephone Company, the use of which was under lease by the carrier from the telephone Company.

The organization asserts that Rule 33, Assignment of Work, and Rule 54, Classification of Work, have been violated.

There is no denial that claimants have done similar work before and that they are able to perform the work in question.

The carrier's defense is on the ground that because the equipment was owned by the telephone company and only leased to the carrier, that the work of connecting and installing was not work of the Railroad Company. We believe that in this case the telephone company had control of the work to be done in conjunction with its own personal property.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.