

Award No. 2983

Docket No. SG-2884

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Mart J. O'Malley, Referee)

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM**

**STATEMENT OF CLAIM:** (a) Claim of the Brotherhood that the Carrier violated and continues to violate the Scope of the Agreement between the Carrier and the Brotherhood when on or about February 22, 1944, it farmed out, assigned, or otherwise allotted a portion of the work specifically enumerated in said Scope to persons not covered by the Agreement.

(b) Claim of the Brotherhood that until persons not covered by the Agreement are no longer engaged in the installation of centralized traffic control on the Pecos Division, all employees covered by the Agreement who are now so engaged or who have been so engaged, beginning about February 22, 1944, shall be paid the difference in the rates they were paid for work on the same general project and the higher rates paid to persons not covered by the Agreement who were similarly engaged.

**EMPLOYEES' STATEMENT OF FACTS:** Construction and installation of centralized traffic control, referred to herein as C. T. C., has been under way for some time on the Pecos Division. Until about February 21, 1944, all of this work on the Pecos Division, as well as the work on similar installations on other parts of the system, was performed by employees covered by the agreement between the Brotherhood and this carrier, effective June 1, 1939.

On or about February 22, 1944, a portion of the C. T. C. installation work on the Pecos Division, that is, the construction and installation of signal pole lines, was transferred to an agent of the carrier, a so-called contractor, who recruited an additional gang of employees for the performance of this portion of the work. One or more of the employees so recruited were formerly employees of the carrier. Employees presently assigned to the installation and construction of signal pole lines on this division in connection with C. T. C. are being paid the following wage rates: Foremen, \$1.95 per hour (signal foremen are paid \$261.10 per month by this carrier); assistant foremen or pushers (jobs ordinarily classified as leading signalmen at \$1.09 per hour), \$1.62½ per hour; linemen (jobs ordinarily classed as signalmen at \$1.04 per hour), \$1.50 per hour; and groundmen (jobs ordinarily classed as helpers at 79c per hour), \$1.00 per hour.

The signal pole line is an integral part of the C. T. C. installation. There are five regular signal crews working on this C. T. C. installation.

There is an agreement between the parties to this dispute effective June 1, 1939.

**POSITION OF EMPLOYEES:** It is the position of the Brotherhood that the carrier violated the provisions of the agreement, particularly the scope, classification, seniority, and promotion rules, when it arranged for the performance of signal work by a third party.

**OPINION OF BOARD:** The Carrier does not contest and therefore admits that the construction of pole lines is within the scope of the Contract with the Brotherhood of Railroad Signalmen of America, and that the work performed by an outside contractor between Vaughn-Mountainair and Melrose-Joffre, was work which rightfully belonged to the members of the Brotherhood of Signalmen. It is contended that in this instance the Carrier was faced with a situation which made it imperative that this work be farmed out to an independent contractor.

It is claimed that the war traffic necessitated the improvement and that the War Production Board insisted that the installation be made in a "reasonable time" or the right and priority for the critical materials and equipment would be withdrawn. It is also contended that the force under the contract was inadequate to perform this work and to also perform regular maintenance.

It is undisputed that efforts were made to increase the force, and that all employees were working full time and even overtime. However, the Contract was violated and if any monetary loss was suffered because of the violation the employees are entitled to it.

This Contract covers Promotions and Transfers. Article IV.

Under this part of the Agreement some of the employees were denied work at a higher rate than would have been theirs if new crews had been established. Their rate of pay would have been increased. While there are awards that deny recovery in situations similar to the one under consideration, such decisions can easily be distinguished from the instant case. Here, we are concerned not only with the scope of the contract, but also with the right to promotion. Considered in that light, the matter is not a mere technical violation. Awards No. 1501-1502-1503.

Award No. 2701 involved a violation of the Scope and Promotion Rules. There the claim of the employees was sustained.

Here our only difficulty is that Section (b) of the claim requests that the rate of pay used by the contractor be used as a basis of an award in this case. This Board cannot create new rates for the employees coming under the contract of the Signalmen, nor can it make an award on a subject not processed as provided under the law.

Therefore, this claim must be sustained as to Claim (a) and dismissed as to Claim (b).

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That (a) the Carrier violated the Contract as claimed, and (b) no basis for a monetary award exists under the claim before us.

#### AWARD

Claim (a) sustained. Claim (b) dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 26th day of November, 1945.

**DISSENT TO AWARD NO. 2983, DOCKET SG-2884**

While concurring in the dismissal of claim (b), we do not concur with the reasons advanced for sustaining claim (a).

The fact that the erecting of signal pole lines is work covered by the Agreement does not of itself preclude the contracting of such work when existing forces were not adequate to perform the work within the time limit prescribed, all signal employees had been upgraded to the extent of their capabilities, and additional forces could not be obtained either for the purpose of augmenting existing gangs or establishing new ones, as completely demonstrated by the facts of record presented in this case.

Under the facts presented, not only was it proper for the Award to relieve the Carrier of penalty but it also is evident that there was no violation of either the Scope or Promotion rules of the Agreement.

/s/ **A. H. Jones**  
/s/ **R. H. Allison**  
/s/ **R. F. Ray**  
/s/ **C. P. Dugan**  
/s/ **C. C. Cook**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

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**INTERPRETATION No. 1 TO AWARD No. 2983**

**DOCKET SG-2884**

**NAME OF ORGANIZATION:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**NAME OF CARRIER:**

**ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM**

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Award No. 2983 merely determined that the claim as filed requested compensation not provided for in the contract of employment and that no claim had ever been processed wherein a request had been made for payment under the terms of the contract.

It is true the award does discuss the contract violation but it cannot be used as a basis for any claim of any character. If claim is made for violation of the contract it must be processed and Award No. 2983 should not be held as a barrier to the rights of the claimant or of the carrier.

What was said in the award about contract violation and monetary loss was pure dicta and unnecessary to the determination of the matter before the Board.

Referee Mart J. O'Malley, who sat with the Division as a Member when Award No. 2983 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**ATTEST: H. A. Johnson,  
Secretary**

Dated at Chicago, Illinois, this 4th day of November, 1946.

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