

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the Pennsylvania System Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that the Carrier violated the Scope of the current agreement when it assigned contractor's men to dig, backfill, and assist in the installation of underground cable at BU Interlocking, Pittsburgh Yard, from September 1, 1948 to September 13, 1948, inclusive.

(b) Claim for compensation for men on seniority roster who should have done the work.

EMPLOYEES' STATEMENT OF FACTS: From September 1 to September 13, 1948 contractor's men performed the work of digging, backfilling, and assisting in the work of installing parkway cable which was being installed in connection with the installation of switches and signals at BU Interlocking Plant, Pittsburgh Yard.

The work of installing the switches and signals at this point was being performed by T. & S. Department employees. The Carrier assigned the contractor's men to assist in the installation of the parkway cable. They worked along with T. & S. Department employees and actually assisted in pulling cable in trenches and setting it in position for connections to signal apparatus.

Parkway cable is an electrical cable consisting of one or more insulated wires, either with or without a lead sheath, upon which is wrapped one or more layers of metal tape for protection against mechanical injury. It is used primarily in signal work, and in this instance was being buried underground to carry electric circuits to and from the signal apparatus being installed.

This claim has been handled in the usual manner on the property and was progressed up to and including the highest officer of the Carrier designated by the management to whom appeals may be made, without reaching a satisfactory settlement.

There is an agreement between the parties involved in this dispute bearing the effective date of June 1, 1943. We understand there is a copy of this agreement on file with the Board, and request is made that it be made a part of the record in this dispute.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning Rates of Pay, Rules and working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

The Carrier has shown that under the applicable Agreement the Employees of the Contractor's Organization performed no service in connection with the digging and back-filling of trenches at BU Interlocking, Pittsburgh, Pa., that accrues exclusively to employees of the Telegraph and Signal Department; that the applicable Agreement was not violated; and that the Unnamed Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim of the System Committee is based on the contention that Carrier violated the scope of the Brotherhood's then effective agreement with it when on various days between September 1 to 13, 1948, inclusive, it permitted a contractor's employees to dig, backfill and assist in the installation of an underground cable at its BU Interlocking Plant, Pittsburgh Yard, Pittsburgh, Pennsylvania.

The work performed by the employees of the Trimble Construction Company, the contractor with whom Carrier contracted to have this work done, consisted of digging a ditch or trench 500 feet long, 18 inches wide and 30 inches deep in which to place an electric cable to be used in connection with switches and signals at the BU Interlocking Plant then being installed at its Pittsburgh Yard. The ditch dug by these men passed under seven yard tracks. Incident to the digging and filling of this ditch, but not material to the claim here made as it is not the basis thereof, is the fact that on one occasion these employees helped pull the cable into the ditch and place it in position for connection with signal apparatus. In fact, Carrier admits this latter was in violation of the scope of the then effective agreement and offered to settle the claim by the payment thereof to that extent.

The "Scope" of the parties' agreement then effective provided, so far as here material, as follows:

"These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, . . . and their respective Telegraph and Signal Department employees, of the classifications herein set forth . . . engaged in the installation and maintenance of all signals, interlockings, . . . and all other work in connection with installation and maintenance thereof that has been generally recognized as . . . signal work . . ."

Carrier may not let out to others the performance of work contained within the scope of its collective agreements with its employees. None of the exceptions referred to in the scope rule are here applicable nor does the factual situation here presented come within any of the excep-

tions recognized by the awards of this Division. Therefore the question is, was the digging and refilling of this ditch used for installing this parkway cable within the scope of the parties' agreement as above set forth?

Digging ditches and refilling them cannot be said to be the exclusive work of any class of employees. The classification of this type of work must be determined by the reason for doing it; that is, its primary purpose. See Awards 3638, 4077 and 6165 of this Division.

Generally speaking we find the work of digging and refilling a ditch or trench in which to lay a cable is work incident to the installation of that of which the cable is a part. See Awards 565, 1218, 4543 and 5161 of this Division.

It may be that under certain situations where, because the ditch or trench passes thereunder, the care and maintenance of the tracks becomes of major concern that Carrier may properly use trackmen to perform the work. See Awards 1134 and 5491 of this Division. However, that such a situation existed that fact would not authorize Carrier to contract the work to outsiders even though the Brotherhood of Maintenance of Way Employees agreed thereto.

In view of the foregoing we find the claim should be allowed. However, since the work is common labor, we hold it should be allowed on the basis of Helper's rate of pay since that is the lowest rated class of employees covered by the Agreement. It should be on a pro rata basis and only to the extent of the time actually worked by the contractor's employees in performing it.

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 the 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 the Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1953.