Award No. 7840
Docket No. SG-7928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road that:

(a) Protest and claim on account of persons other than T&S employes of the L. I. R. R. were used to repair a duct line containing T&S and T&T cables and wires. This happened on various dates during the month of May 1952. This duct line is East of Valley Tower.

The above duct line is maintained by T&S employes so therefor the use of persons other than T&S employes to work on this duct line is a violation of the current T&S Agreement.

(b) We claim an equal number of T&S employes equal to the number of persons used, shall be paid a days pay each for each day this work continued. This shall be paid at the punitive rate of pay.

The names of the T&S employes will be furnished to the carrier by the T&S Committee.

EMPLOYES' STATEMENT OF FACTS: The Scope work involved in this case consists of a concrete manhole (20½' x 5' x 7½) which was installed by contractor, Hendrickson Brothers Company, whose workers were not covered by the controlling and governing working agreement covering T. & S. and T. & T. employes on the Long Island Rail Road.

On January 3, 1952, one of the contractor's workers while operating a bulldozer incident to sewer construction, dug up a fibre-concrete duct line containing T. & S. and T. & T. wires at a location approximately 250 feet west of Saterie Avenue, Valley Stream.

The purpose of installing this manhole in lieu of replacing the duct line in its original form was to provide working space for T. & S. employes to permanently splice the severed cables instead of renewing the existing severed cables which were approximately 500 ft. in length.

The installation of manholes is not an unusual task for employes covered by the T. & S. agreement. A gang of T. & S. employes only a short time prior

3. T&S employes did not possess the necessary skills or equipment to perform the work that was done by the contractor.

(Exhibits not reproduced.)

OPINION OF BOARD: Hendrickson Brothers Company was awarded a contract by Nassau County, New York, for the construction of a sewer and drainage project in that county.

While this work was in progress, early in January of 1952, a bulldozer operator, in the employ of Hendrickson Brothers Company, inadvertently drove his machine into a fibre-concrete duct line, demolishing it. This duct line contained Carrier's T&S and T&T wires.

The severed lines were repaired by Carrier's T&S employes and placed in a temporary wood casing pending completion of the sewer project. The new sewer line was being constructed at a right angle to, and ten feet below, the duct line which housed Carrier's wires.

Since responsibility for the damage rested with Nassau County and the general contractor, as County's agent, the damage was repaired by the contractor at no cost to Carrier. It was accomplished by constructing a concrete manhole above and astride the new sewer line.

Once the manhole was completed, all work incident to restoration of Carrier's wire system was performed by Carrier's T&S employes.

The Organization claims that because the damaged duct line "is maintained by T&S employes so therefore the use of persons other than T&S employes to work on this duct line is a violation of the current T&S Agreement."

It is argued by the Organization that the contractor had no right to do the work in question; that T&S employes in the past have built a form of manhole which Carrier called a pullbox, that T&S employes have performed that class of work. It was further argued that the Organization's General Chairman was available to Carrier, and Carrier could have consulted with him regarding the work in question.

Award 3251 (Carter) and Award 4870 (Shake), are cited on behalf of the Organization in support of its position.

The Carrier involved in Award 3251 contracted with workers outside the Agreement to repaint signal apparatus and structures. It was held to be work clearly within the Signalmen's Agreement, and work ruled to be ordinarily and customarily performed by Signalmen, and the Organization's claim was upheld.

In sustaining the Organization's claim in Award 4870, this Board noted it "is also proper to say that when a carrier contracts out work which would appear to be within the scope of the agreement, it must assume the burden of establishing that such conduct was reasonably justified by the facts."

Carrier, on the other hand, makes the point that construction of this concrete manhole was not work within the Scope of the parties' Agreement because the Carrier was not responsible for it nor did it control the execution of the work.

Carrier also cites a number of Awards in support of its position, among them:

> Award 5246: "But the Scope Rule of a collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad."

Award 4598: "It is our view that scope rule requires the carrier to assign work in the categories mentioned therein and which the carrier performs or is responsible for performing to the employes covered by the agreement."

Award 6499: "Since this was construction work 'for account of and at the cost and expense of the City', it did not constitute work of the Carrier and the employes of the Carrier could have no possible claim to its performance."

Two points are self-evident in the instant case:

1. When contractor's equipment, operated by contractor's employe, demolished the duct line, Carrier's T&S employes repaired the severed electrical lines and placed them in a temporary casing.

2. When the new manhole was constructed, Carrier's T&S employes spliced permanently all T&S and T&T wires.

Here, unlike the situation in Awards 3251 and 4870, Carrier did not contract the work out. It was not its work to perform. It was the liability of Nassau County, and the County had the right to determine the manner in which the work was to be performed and by whom.

It is abundantly clear a denial award is in order.

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 Employes involved in this dispute are respectively carrier and employes 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 Agreement has not been violated.

AWARD

Claim (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1957.