

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated the Scope Rule and other provisions of the Signalmen's Agreement when it transferred, farmed out, or otherwise assigned the generally recognized signal work of building concrete foundations for signal relay house to persons not covered by and who hold no seniority rights under the Signalmen's Agreement.

(b) The signal employees on the Cincinnati Seniority District affected (signal gang employees) by reason of the violation of the Signalmen's Agreement be compensated at their proper rate of pay on the basis of time and one-half for an amount of time equivalent to that required by the contractor's employees to perform the diverted generally recognized signal work.

EMPLOYEES' STATEMENT OF FACTS: The signal work involved in this claim consists of the signal work performed by the contractor's employees while building forms, pouring and finishing concrete for the foundations on which signal relay house was installed on the car retarder project at Stevens, Kentucky.

On or about August 1954 contractor employees commenced performing the signal work embraced in this claim. The signal work performed by the contractor's employees has been recognized as signal work on this Carrier, and the work has been performed by signal employees for the past 10 to 15 years, with no exceptions, on all Divisions of this Carrier's property.

It is evident that this Carrier furnished detailed blueprint to the contractor, as revealed by the Brotherhood's records, which includes blueprint Drawing No. 30063-5, Sheet No. S-1, drawn by J.H.A. and traced by

flood levels, and the signal employes have not contended for the erection or construction of such steel work.

Basic Contention

What the Employes say in this case is that the Carrier was all right in contracting out the driving of the piling for supporting the concrete beams and pedestals or foundations, and was all right in contracting the construction or erection of the steelwork for supporting the equipment house, but that signal employes should have been brought in, between the driving of the piling and the erection of the steelwork, for pouring the foundations or concrete pedestals.

Aside from the fact that the rules do not provide or contemplate that *signal employes must be brought in to do small segments of contracted work* in this manner, it would not be practical to have contractors undertake work in such manner without undue cost and additional expense to the Carrier.

The Third Division has already announced through its Award 6112 the principle that work to be contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some of it *could* be performed by employes of the Carrier.

The Opinion of the Board in Award 6112 provides the following which is pertinent to the instant case:

"The Carrier may contract work out when special skills, equipment, or materials are required, or when the work is unusual or novel in character, or involves a considerable understanding. See Awards 757, 2338, 2465, 3206, 4712, 4776, 5029, 5151, 5304, 5563.

"The work to be contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some of it could be performed by the employes of the Carrier. See Awards 3206, 4776, 4954, 5304, and 5563."

The Board will be quick to see that the time devoted to pouring the concrete foundations for carrying the steelwork for the equipment house was a very insignificant part of the work project of constructing the five-story control building and doing the necessary work on the connected equipment building structure in question.

Therefore, it is conclusive that there has been no violation of the Signalmen's Agreement in this case, and the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the construction of four pedestal-type concrete foundations which support the signal relay house adjacent to the five-story central control tower of a new car retarder system at Stevens, Kentucky. Petitioner contends that the diversion of this work to a contractor violated the Scope Rule of the applicable Agreement.

Carrier claims justification for the diversion of the work on the basis that it was incidental to the properly contracted out construction of the central control tower and that the claimed work was novel in that piling had to be driven to assure proper bearing, especially since the location was subject to flood conditions.

The Scope Rule of the Agreement states, in part:

"This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair and construction of signals . . . car retarder systems . . . and all other work generally recognized as signal work."

It is not disputed, and the record establishes, that for many years the signal men have constructed concrete foundations necessary to support signal relay houses. These circumstances considered with the Scope Rule, lead to the view, on the basis of numerous awards of this Division, that the burden is upon the Carrier to show justification for the diversion of the work to a contractor. See Awards 5485, 5470, 5304, 5152, 5151, 4888, 4833, 4701.

The difficulty with the Carrier's position is that, in the face of Petitioner's denials thereof, its averred justification for the diversion of the claimed work is not sustained factually. The Carrier asserts that its contract with the contractor included with construction of the five-story control tower, the driving of piling for the concrete beams and pedestals for supporting the relay house, the construction of the beams and pedestals themselves, the erection of the supporting steel work for the relay house, and construction of the connecting walkway between the control tower and the relay house at the second-story level. In opposition, Petitioner repeatedly asserts that, in fact, the driving of the wood piling for the control tower and the relay house was performed by the Carrier's employees, and that, in fact, the erection of the supporting steel work for the relay house, including the beams and pedestals, was performed by the Carrier's signal employees. Petitioner also asserts that the signal relay house was mounted to the steel work by the Carrier's employees and admits that the contractor constructed the walkway connecting the central tower with the relay house. The sketches submitted by the Carrier shed no light on this sharp factual conflict.

Manifestly, if the assertions of the Petitioner were to be regarded as sustainable, then the Carrier's contention that the claimed work was incidental to, and a novel part of, the farmed out construction of the central tower would fail. However, there is no evidence in the record on the basis of which we may say that the assertions of either one of the parties should be preferred over the assertions of the other party, and, as we have seen for the reasons already stated, this Division has placed the burden of establishing justification for the diversion of work from the applicable Agreement upon the Carrier. As a result, we must conclude that the Carrier has not established such justification and the claim must be sustained.

Carrier objects to the claim on the ground that it is for unnamed persons. This Division has repeatedly held that a claim is not defective on that ground where, as here, the question at issue operates uniformly upon a class of employees who can be readily ascertained and identified. Awards 8526, 8377, 7915, 7859, 4488, 4821. That is the situation in this case, and no complaint has been made that the signal employees on the Cincinnati District affected cannot be ascertained.

Likewise in accordance with our prior Awards, compensation on the claim as sustained should be at the pro rata rate and not at the time and one-half rate claimed. See Awards 7858, 7827, 7672, 7324, 7079, 6891, 6444, 6158, 5978, 4616.

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 Agreement was violated as stated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of September, 1960.