

Award No. 11209

Docket No. SG-10955

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, especially Rule 1, Scope, when on or about September 3 through 11, 1957, it assigned or otherwise permitted B & B Department employes, who are not covered by said agreement, to construct and install concrete foundations to be used for motors and compressors in connection with the retarder system at New Boyles Yard, Boyles, Alabama.

(b) The employes of Signal Gang #1 who were entitled to this work, had it been properly assigned, namely Foreman H. B. Williams, Signalmen T. E. George, J. D. Wilhite, J. D. Atchison, T. J. Armstrong, Leading Signalman P. E. Brock, and Signal Helpers K. E. Cheatwood, Mr. R. Benson, A. A. Delaney, J. T. Hyatt and L. B. Grant, be compensated at their respective rates of pay for an equal amount of time as that required by the persons not covered by the agreement to perform this generally recognized signal work. The amount of time is estimated at 194 man-hours. (Carrier's File: G-304-12, G-304)

EMPLOYES' STATEMENT OF FACTS: During the month of September, 1957, there was in progress on the property of the Carrier a project of constructing a car retarder system at the New Boyles Yard, Boyles, Alabama. Included in the construction were six concrete foundations for motor and air compressors, the motor and air compressors to be used exclusively by the Signal Department for the operation of the car retarder system in the Boyles Yard.

The signal gang began the excavating for three of the foundations, then the Carrier transferred this work to employes of the Bridge and Building Department, whose employes are not covered by the Signalmen's Agreement. These employes completed the excavating for the three foundations, excavated for three others, made the forms for six foundations, and put the reinforcement in place in six foundations. The concrete was poured from trucks that are constructed for mixing concrete while in transit, and is known as ready-mixed concrete. The Bridge and Building Department employes finished the

would file claims for B&B Department employees at any time signalmen construct foundations such as those involved in the instant dispute.

Carrier submits it is apparent that a jurisdictional dispute is involved in the instant case which challenges the right of carrier to have certain concrete work in buildings performed by Maintenance of Way Employees under their agreement, in line with the past practice.

Carrier, therefore, urges that the Brotherhood of Maintenance of Way Employees be made a party to this case, to insure that the rights of the Maintenance of Way Employees are protected and to also insure that no overlapping of contractual obligations on the part of the carrier is brought about.

Merits of the Case

As hereinabove stated, it has been the practice for many years for employees covered by the Maintenance of Way Agreement to perform all concrete work in buildings erected by carrier's forces, including foundations for any machines installed in the buildings.

This practice is in accord with the provisions of the Maintenance of Way agreement and the exception contained in the scope rule of the Signalmen's Agreement, viz:

" . . . carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers, and signal bridges) . . ." (Emphasis ours.)

The practice of having Maintenance of Way employees perform all concrete work in buildings erected by carrier's forces has been in effect for many years.

Carrier submits the historical facts do not support the Signalmen's contention in the instant case.

It is, therefore, carrier's position (1) that the Maintenance of Way employees are vitally interested in this case and, therefore, should be made a party to this dispute; (2) the exception contained in the scope rule of the signalmen's agreement specifically excludes from the scope of that agreement such concrete work as here involved; and (3) the historical facts conclusively show the scope rule of the Signalmen's Agreement has heretofore been interpreted contrary to the Signalmen's position in the instant case.

In view of the foregoing facts, it is obvious there is no basis for the claim and same should be denied.

All matters referred to herein have been presented, in substance, by carrier to representative of the employees, either in conference or correspondence.

OPINION OF BOARD: At issue here is whether the construction of concrete foundations for compressors and motors, as a component part of the laying of concrete flooring and the foundations of a building to house such compressors, was work coming within the Scope Rule of the Signalmen's Agreement.

The dimensions of the building were approximately 37' x 20'. It was made of prefabricated metal set on reinforced concrete foundations with a cement floor containing several pedestal foundations for air compressors to

supply air for a car-retarder system. Signalmen were first used to begin excavating for some of the pedestal foundations but were replaced by employees of the B & B Department (represented by the Brotherhood of Maintenance of Way Employees) who completed this as well as other work required in the construction of the building.

The Division has complied with the statutory requirement of Section 3, First (j), of the Act when on January 9, 1963, it served notice of the pendency of this dispute on the Brotherhood of Maintenance of Way Employees and advised that Organization of its right to participate in these proceedings. The Brotherhood declined, stating it was not "involved." Accordingly, we may now proceed to a consideration of the merits of the claim under the Signalmen's Agreement (Award 10531).

The question here is one of contract interpretation, i.e., whether the work claimed falls within the Scope Rule of the agreement in evidence. The rule covers employees engaged in ". . . concrete and form work in connection with signal and inter-locking systems (except that required in buildings, towers and signal bridges) . . ." (Emphasis ours.)

While it is clear, as Petitioner emphasizes, that classification of work is determined by the reason for doing it and its primary purpose (Awards 3638, 4077, 4553, 4637, 6165, 6214 and 10730), here the basic and major purpose was to construct a building to house the compressors. The construction of pedestal foundations within the building was a minimal portion of the larger task, and an inseparable and component part thereof. Standing alone, the construction of such pedestals would fall within the scope of the rule; under the facts of record here it falls within the exception to the rule.

Petitioner has cited and relied on Award 6921 as controlling, but it is clearly distinguishable on the facts. There the work claimed (and properly granted) was the construction of concrete foundations for highway crossing signals and cable post installations. No building or housing was involved. The Award, therefore, is not controlling here.

In view of the foregoing, this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1963.