Award No. 11733
Docket No. SG-10707

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al.:

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed and/or permitted an outside contractor and his four employes, who are not covered by the current Signalmen's Agreement, to perform signal work at High Point, N.C., on July 1, 1957.

(b) The Carrier now pay Messrs. C. J. Dorminey and J. J. Cartee, Signalmen; E. M. Suthard, Assistant Signalman; and L. L. Luttrell and P. P. Cash, Signal Helpers, at their respective rates of pay for eight hours each on account of the violation cited in part (a) of this claim. [Carrier's File SG-11256]

EMPLOYES' STATEMENT OF FACTS: On Monday, July 1, 1957, the Carrier allowed and/or permitted an unknown contractor from Greensboro, N. C., to perform signal work at High Point, N.C. The signal work consisted of the digging of three holes and the setting of three signal line poles (1 — 45′ pole and 2 — 40′ poles).

The signal work was performed as a result of the installation of a new spur track at High Point, N.C., and was necessary because the signal line had to be raised to clear the new spur track.

Mr. L. E. Walke, Signal & Electrical Supervisor, was in charge of the territory in which the signal work was performed and knew in advance that the signal work had to be performed on July 1, 1957. A signal gang with trucks and proper equipment to perform such signal work was located at Charlotte, N.C., and should have been properly notified and used to perform this signal work. Instead of using the proper signal forces to perform this signal work, Signal & Electrical Supervisor Walke arranged to have the signal work performed by an unknown contractor and four of his employes, who are not covered by the Signalmen's Agreement, and, accordingly, have

Claim which the Brotherhood is here attempting to assert is not only not supported by the agreement, but it is not supported by prior decisions of the Board.

CONCLUSION

Carrier has proven conclusively that:

(1) the effective signalmen's agreement was not violated as alleged.

(2) the Board does not have authority to establish the make-work or featherbedding rule, here demanded by the Brotherhood.

(3) claim is not supported by the principles of prior decisions of the Board.

(4) drilling holes for electrical transmission line poles mechanically and mechanically lifting and setting the poles in the pole holes does not constitute the performance of signal work within the meaning of that term as used within the effective signalmen's agreement.

Claim, being wholly without merit and unsupported by the plain language of the agreement, the Board has no alternative but to make a denial award.

All evidence presented in support of carrier's position is known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right, after doing so, to make appropriate response thereto and submit any additional facts and evidence necessary for the protection of its interests.

OPINION OF BOARD: On June 28, 1957 Carrier's Signal and Electrical Department learned that a new spur track was to be built near High Point, North Carolina, starting July 1, necessitating, initially, the raising of transmission lines. To accomplish this it became necessary to remove three poles and replace them with longer ones (45 ft., 40 ft. and 35 ft.). Since, according to the Carrier, an electrical workers' line gang was not employed on Lines East at the time, and since no signal gang was available to install the poles on July 1, it arranged for the L. W. Routh Construction Company, Greensboro, North Carolina, to (1) deliver the poles to the work site, (2) provide necessary machinery and equipment for drilling three holes and setting the new poles in place; (3) provide operators to perform this work.

The job was accomplished on July 1 by a force of five men: three from Routh Construction Company and two from the Carrier (Signal Maintainer W. A. Johnson and Assistant Signal Maintainer J. C. Cox). The record indicates that the poles were delivered at 10:15 A. M. and set by 1:15 P. M.

Thereafter claims were submitted in behalf of five men (two Signalmen, one Assistant Signalman and two Signal Helpers) requesting eight hours' pay. The Organization contends, in substance, that: (1) The work involved is covered by the Signalmen's Agreement; (2) The work was performed by employes of an outside contractor who had no right to perform Signal work under the Agreement; (3) Digging pole holes and setting poles of 45 ft. lengths has always been performed by signal employes; (4) Carrier could have made arrangements to have the proper signal employes and equipment available;

(5) The grounds offered by Carrier for contracting out the job do not fall within the permitted exceptions listed in the Scope Rule.

Carrier, on the other hand, affirms: (1) Drilling pole holes mechanically and setting poles in place mechanically does not constitute signal work within the meaning of the Signalmen's Agreement; (2) Such work is not reserved exclusively to Signalmen; (3) The existence of an emergency situation on July 1 justified Management's reasonable action; and (4) The claim is not supported by prior Board decisions.

A review of this record, the Agreement, and some past Awards convinces us that the first part of the Organization's claim must be sustained. At issue here is a question of contracting out work, a matter specifically dealt with in Paragraph 4 of Rule 1 — The Scope Rule:

> "It having been the past practice, this Scope Rule shall not prohibit the contracting of larger installations in connection with new work nor the contracting of smaller installations if required under provisions of State or Federal law or regulations, and in the event of such contract this Scope Rule 1 is not applicable. It is not the intent by this provision to permit the contracting of small jobs of construction done by the carrier for its own account."

It is apparent that the fifteen man-hours of work (six performed by Carrier employes) here in dispute did not constitute work in connection with "larger installations" nor work on "smaller installations . . . required under provisions of State or Federal law or regulations." It was not, therefore, the type of work the parties contemplated should be contracted out. Moreover, even assuming that, in an emergency, Carrier might contract out some job, we are not persuaded that such emergency existed on July 1.

Carrier argues, however, that it was free to act as it did since the work did not belong exclusively to Signalmen (although it does not deny they have performed similar work in the past). Management emphasizes the provisions of Paragraph 3 of Rule 1:

> "Nothing in this Scope Rule 1 or any other provision of this agreement shall be construed to bar the carrier from continuing to assign to Electrical Workers on Lines East work of the character heretofore performed by employes in the so-called IBofEW line gang on Lines East and such practice may be continued without being an infringement on the rights of employes subject to this agreement; it being agreed that the Electrical Workers in the so-called IBofEW line gang on Lines East, as well as employes covered by this agreement, have been performing both low and high tension line work."

Further, in this regard, Carrier notes that (1) Rule 1 does not list poles or pole holes among those items specified as Signalmen's work, (2) Rule 137 of the I.B.E.W. Agreement does refer to pole lines, (3) Electricians, operating under this I.B.E.W. contract, have worked on poles in the past. These rules declare:

"RULE 1

> "Signal work shall include the construction, installation, maintenance and repair of signals, either in signal shops, signal storerooms or in the field; signal work on generally recognized signal systems,

wayside train stop and wayside train control equipment; generally recognized signal work on interlocking plants, automatic or manual electrically operated highway crossing protective devices and their appurtenances, car retarder systems, buffer type spring switch operating mechanisms, as well as all other work generally recognized as signal work."

* * * * *

"RULE 137

"Linemen's work shall consist of the building, repairing and maintaining of pole lines and supports for service wires and cables; * * * all outside wiring in yards, and other work properly recognized as linemen's work not provided for in Rule 136."

These arguments, in our estimation, would have more validity if Management had actually assigned the task in question to Carrier-employed Electricians rather than to outsiders. Assuming that, pursuant to the two applicable Agreements and past practice, the work had been given to Electricians, there might well be grounds for arguing that the Signalmen's Agreement had not been abridged. But that is not the situation now confronting us. Here, the work was not given to employes of either group who might have laid claim to it. While no complaint was filed by the Electricians, the Signalmen did protest. There is good reason, therefore, to uphold their claim.

This is not a situation, moreover, as in some of the cited awards, where almost any employe might be required to perform a simple brief task such as changing a light bulb or replacing a fuse. It seems evident that the chore performed on July 1 was covered by the Signalmen's Agreement, if not by specific detailed listing in Rule 1, then by the broader reference to "construction, installation, maintenance and repair . . . in the field . . . as well as all other work generally recognized as signal work." (It may also be noted that "excavating, digging holes and trenches . . ." are listed among Signal Helper duties in Classification — Rule 2(f).)

In short, assuming that Management negotiates certain work into two collective Agreements (thus depriving each Organization of complete exclusivity), that is no warrant, in our judgment, for contracting out that work to outsiders, when such action is specifically restricted, nor does it necessarily bar a sustaining Award.

As for the alleged "precedents," none are precisely in point. However, in a 1960 decision involving these same parties (Award 9749) in another contracting out situation involving a job requiring the lifting and setting in place of some signal equipment which, Carrier asserted (much as does here), was not exclusively Signalmen's work, the Board held that, even though the actual work "may be classified as common labor not requiring the skill of a Signal Maintainer, it was work incidental to the performance of work required by the Signalmen's craft and under the Scope Rule was work which Carrier was prohibited from contracting out." In another dispute between these parties concerning digging and filling holes in connection with relocation of a pole line (Award 6702) the Board sustained the Signalmen's claim for time spent at such task by section laborers not covered by the Signalmen's Agreement. (It is true that the Board disallowed that part of the claim covering the time spent by a Maintenance of Way Department operator handling poles with a power shovel, but no such circumstance exists in the case at hand. Moreover,

in Award 6702, Management advanced many of the same arguments presented here with respect to exclusivity and the Signalmen's scope rule, the I.B.E.W. Agreement, practice, emergency situations, and the like. All were rejected.) The Board has also been concerned with Signalmen's work on this Carrier in Awards 10613, 4471, 3999 and 2932.

While sustaining the first part of the Organization's claim, we cannot sustain the second part in its entirety. The evidence shows that three Routh Construction Company employes worked three hours on the disputed job. We shall, therefore, grant the Organization's claim only to the extent that three of the Claimants are to be granted three hours' pro rata pay. The parties shall determine which of the Claimants are to receive the allotted amounts.

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 Carrier violated the Agreement.

AWARD

Claim (a) sustained with respect to work performed on July 1, 1957 by three employes of an outside contractor. Claim (b) sustained to the extent that three of the Claimants (their identity to be determined by the Parties) shall each receive three hours' pro rata pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.