

Award No. 12970
Docket No. SG-12324

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Fort Worth and Denver Railway Company:

On behalf of General CTC Signal Maintainer G. W. Camp and Signal Maintainer F. W. Barton for sixteen (16) hours each at one and one-half times their respective rates of pay for work performed on August 17 and 18, 1959, by electrical contractor wiring building erected at Wichita Falls, Texas. [Carrier's File: SG-23.]

EMPLOYEES' STATEMENT OF FACTS: During 1958 a dispute arose because an employe covered by the Signalmen's Agreement was required to perform certain work which Electrical Workers contended accrued to them. This matter was discussed by the Carrier and representatives of the two crafts (Signalmen and Electrical Workers), with the Carrier taking the position that certain electrical work accrued to employes covered by the Signalmen's Agreement.

In connection with this matter, Mr. C. W. Ruffner, Carrier's Assistant to General Manager, wrote the following letters, dated July 8, 1958, to Mr. C. L. Slocum, General Chairman, International Brotherhood of Electrical Workers, and to Mr. J. D. Richards, General Chairman, Brotherhood of Railroad Signalmen of America, respectively:

"Mr. C. L. Slocum
General Chairman
International Brotherhood of Electrical Workers
Route 1, Box 1510
Irving, Texas

Dear Sir:

Reference is made to your letter of May 23, 1958, claim of Electrician R. L. Prescott for six hours at pro rata rate of pay, based on the allegation that work performed by Signal Maintainer Stotts in making repairs to crossing signal at Iowa Park, Texas, February 27, 1958, belonged to the Electrical Workers craft.

In consideration of the extended period of time in which the signal employes have had a lateral agreement whereby signal maintainers took over the work of telegraph linemen, who also performed some electrical work, it has never been made clear to the Carrier why the Employes pursued this claim. It has never been denied by the Petitioner that the employes have performed electrical work when it is assigned to them, and it can not be denied by the Petitioner that through all these years the Carrier has contracted out electrical work when for various reasons the work was not "assigned to them by the Carrier," as covered by Carrier's Exhibit No. 3. In addition, it is well known, and can not be denied, that there are many other electrical jobs that have been awarded to outside contractors when it was felt the signal employes did not have time or qualifications to perform such work. The contracting of electrical work has never heretofore been questioned and there seemed to be a very thorough understanding through all these years that the signalmen would only do such work when "assigned to them by the Carrier."

These facts were pointed out to the Employes in conference, and they were asked to give full consideration to their agreement and past practice, which has placed an interpretation on the rules, and withdraw this claim. Their failure to do so appears to be an attempt to get away from a well understood rule and practice that has existed for more than 22 years in the hopes that they may obtain a rule by an interpretation which will penalize the Carrier for performing work strictly in accordance with agreements made with the Petitioner. It is not believed the Board will deviate from its rules and authority by giving the Employes the new rule they seek in this dispute.

For the reasons expressed, and particularly, for the basic reason that this claim is without rule support, the claim should be denied in its entirety, and the Carrier respectfully requests the Board to support the Carrier's position.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves construction at Wichita Falls, Texas, of a building for use of the mechanical department employes. It was constructed by company forces, and is located within the fire zone of the City of Wichita Falls.

The record indicates that under ordinary conditions, there would be no dispute as to whom the work should be assigned. In this case however, the Carrier alleges that the City of Wichita Falls would not grant a permit to erect the building within the fire zone, unless the plumbing and electric wiring work was performed by employes holding licenses issued by the City of Wichita Falls. The Carrier states that it does not have employes so licensed.

Claimants are monthly-rated employes, who were fully employed during the performance of this work.

We are persuaded by the record in this case, that the Carrier acted properly in securing the qualified personnel to comply with the Wichita Falls electric code; more particularly described as Ordinance 1687. It is basic that the agreements and contracts which this Board is called upon to interpret, must be construed in concert with existing laws and regulations.

But for this ordinance, the work would clearly be assigned to the signalmen. However, due to the existence of this ordinance, we hold that the Carrier did not violate the agreement when it allowed an outside contractor to perform the work in question.

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 14th day of October, 1964.