Award No. 15536
Docket No. SG-15010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

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

> On behalf of Messrs. J. L. Holsenback, Jr. and P. G. Lotshaw for compensation at their respective rates of pay on a proportionate basis for all man hours that were worked by the contractor and his forces, or by persons not covered and who held no seniority or other rights under the Signalmen's Agreement, while performing recognized signal work between June 9 and July 9, 1963, in connection with a crossing signal installation at or near Gadsden, South Carolina, in direct violation of the Scope Rule and other provisions of the Agreement. [Carrier's File: SG-19184]

EMPLOYES' STATEMENT OF FACTS: This dispute, like numerous others from this property which have either been decided by this Division, previously, or are awaiting adjudication, involves signal work which Carrier contracted out to persons not covered by the Signalmen's Agreement. On each of eight (8) different days during the period from June 9 to July 9, 1963, varying numbers of from one to six men, not covered by the effective Signalmen's Agreement, were used by Carrier to perform certain parts of the signal work necessary to install the highway crossing flashing light signals at or near Gadsden, South Carolina. This signal work included setting a relay case on its foundation and the digging and backfilling of a trench for burying signal cable, which was installed by Signal Department personnel, in, around, and through Highway No. 48, located at Mile Post S. C.-111.4 on Carrier's Charleston Division.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim was presented by General Chairman E. C. Melton on behalf of J. L. Holsenback, Jr., and P. G. Lotshaw to Signal and Electrical Superintendent J. M. Stanfill in a letter, dated July 11, 1963, which we have reproduced and identified as Brotherhood's Exhibit No. 1, attached hereto. Subsequent pertinent correspondence relative to the handling of the case on the property has been reproduced and attached hereto; it is identified as Brotherhood's Exhibit Nos. 2 through 6.

In addition to the above, Messrs. Lotshaw, Holsenback and Gayle performed certain work which was incidental to the "generally recognized signal work" referred to, such as lifting, excavating, etc.

By letter dated July 11, 1963, the Brotherhood's General Chairman presented claim to Carrier's Signal and Electrical Superintendent alleging violation of the agreement on the grounds that Carrier "contracted a part of a crossing signal installation at or near Gadsden, S. C., M. P. S. C.-111.4," and demanding that the employes here named claimants be paid unspecified amounts of unearned compensation. The General Chairman has not, to this date, identified the so-called "recognized signal work" allegedly contracted by Carrier in connection with the installation of highway crossing signals involved. Claim was denied as it was handled through the usual channels on the property for reasons which will be hereinafter dealt with.

OPINION OF BOARD: The Claim before the Board is based on the allegation that Carrier has violated the provisions of the Scope Rule of the effective Agreement between the parties, when Carrier allowed certain, work, generally recognized as Signalmen's work to be performed by an outside Contractor and his forces. The work involved was connected with a crossing signal installation at or near Gadsden, South Carolina.

A review of the record in this case reveals that the claim as submitted as well as the correspondence exchanged between the parties, does not identify the work about which the Organization is complaining with that degree of particularity requisite for the Carrier to make an adequate defense. The Claim is vague and indefinite, and the Organization, being the proponent, always has the obligation of presenting factual evidence to substantiate its claim and this must be done by a preponderance of evidence. This the Organization has failed to do. We are not unaware of Awards 11733 and 9749, submitted to us by the Organization, but those two cases were decided on differing factual situations and different evidence. The evidence presented in the instant case is not sufficient to warrant a sustaining award. We will dismiss the claim.

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1967.

DISSENT TO AWARD NO. 15536, DOCKET NO. SG-15010

The Majority, Referee and Carrier Members, in their zeal to relieve the respondent Carrier from its contractual obligation, have invented an unsupported and inapplicable hypertechnicality as an avenue to their end. They contend that the evidence presented is not sufficient to warrant a sustaining award because:

> "A review of the record in this case reveals that the claim as submitted as well as the correspondence exchanged between the parties, does not identify the work about which the Organization is complaining with that degree of particularity requite for the Carrier to make an adequate defense."

This position is in error because this holding, if valid, would go to the rule against concealment of evidence; it is axiomatic that the rule does not apply where, as here, evidence is equally available to both parties. That it was so available is evident because it was the Carrier that contracted the work; certainly the Carrier was aware of its content. Additionally, in correspondence on the property the Carrier's Signal and Electrical Superintendent stated:

> "Also, the work performed by the contractor and his forces for this Department is classified as work which we have never recognized as belonging exclusively to signal employes. * * * "

and the Assistant to Vice President said:

> " * * * you are even including straight electrical work performed by forces of the Rural Electrification Association for installing a power and meter pole for a service connection. * * * "

Hence it can no longer be argued that the Carrier was prejudiced. Neither was the Board at a loss as to the exact work in dispute, for the employes set out in detail in their statement of facts and exhibits what both parties knew to be the subject of the claim in handling on the property, and our several awards disposing of disputes between these parties over identical work constitute all of the evidence needed to render a correct award here.

Award No. 15536 is in error; therefore, I dissent.

W. W. Altus
Labor Member
5/10/67

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