

Award No. 16337
Docket No. SG-16540

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, 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. that:

(a) Carrier violated the Signalmen's Agreement by the arbitrary exercise of power in the contracting out of Signal Work, and continues to violate the clear and unquestionable provisions of the current Agreement (especially the Scope Rule) with the contracting out of Signal Work, and without any consideration of the service, seniority, and other rights of its Signal Employees.

(b) Signal Foremen K. E. Riner, R. M. Roberts, H. M. Rumpy, and J. W. Stinnett, with their forces listed as follows:

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|---------------------|--|
| Leading Signalmen | — V. D. Young, S. S. Shipley; |
| Signalmen | — C. B. Wham, G. C. Morris, M. H. Hensley, L. E. Sartain, F. J. Blackburn, G. Pritchett, B. L. Roark, D. D. Blackwell, T. N. Thompson; |
| Assistant Signalmen | — W. L. Hill, J. R. Blackwell, J. R. Burns, W. R. Crowe, T. L. Gibbs, L. L. Bruner, D. A. Hensen, R. Adams, S. J. Myers, R. M. Freeman, J. R. Blankenship; |
| Helpers | — W. Gibson, L. R. Stamey, P. Morris, J. K. Ballew, R. L. Graham, J. W. Way, Jr., T. Swink; |

be compensated at their respective and applicable overtime rates of pay, on a proportionate basis, for all man-hours of work, or service, of the contractor or contractors and their forces in performing Signal Work, beginning April 14, 1965, and continuing thereafter so long as the Agreement is violated and the Signal Work is performed by persons not covered and who hold no seniority or

other rights with the Carrier under the current Signalmen's Agreement.

(c) This claim to extend to other Signal Employees who may bid in or are transferred to a position or positions involving the CTC installation and the contracting out of Signal Work, beginning on the date or dates that such employees begin work on the territory involved (i.e., between Greenville, South Carolina and Salisbury, North Carolina) and continue thereafter so long as they may be affected, and on the basis of the circumstances involved.

(d) Carrier in the event of a favorable decision, be required to review its records, in cooperation with the Organization, to develop and determine the amount of work and time in man-hours that the contractor or contractors and their forces were paid for, or the amount of money paid for the Signal Work performed; to the extent of determining the man-hours or money due the Signal Employees involved for the period of time that is involved in the claim or claims. (Carrier's File: SG-21647)

EMPLOYEES' STATEMENT OF FACTS: This dispute, like others from this property, of which some have been decided by the Division and several are awaiting adjudication, involves the performance of Signal Work by persons not covered by the Signalmen's Agreement.

In the installation of Centralized Traffic Control (CTC) and modifications of Automatic Block-Signal (ABS) and Interlocking Systems existing on the north end of the Charlotte Division between Greenville, S. C., and Salisbury, N. C., Carrier has contracted out to companies from Cornelia, Georgia, and Charlotte, N. C., certain items of Signal Work.

This work included excavating for concrete foundations for signals and bungalows; construction of forms for the concrete foundations; furnishing of concrete for the foundations; setting anchor bolts in the foundations, pouring of concrete and the finishing of it; assembling and erecting signal bridges on the concrete foundations constructed; plowing in underground CTC code cable; excavating for underground pipe, conduit and junction boxes; setting of junction boxes; and furnishing machines and employees to operate them.

Machinery used in this project, operated by the contractors' forces, included backhoe, crane, cable plow, tractor, bulldozer, air compressor, trucks, trailers, and cable reel.

The contractors are identified as J. L. Pitts of Cornelia, Georgia, and Harrison-Wright of Charlotte, N. C. The former started on or about April 14, 1965 and with a force varying between 10 and 20 men performed the work associated with construction of the foundations and erection of the signal bridges. The latter came on the job on or about April 24, 1965 and with a force also varying between 10 and 20 men plowed in the underground CTC code cable.

Work of this exact same kind has heretofore been performed by Carrier's Signal forces. In the performance of such work signalmen are required to operate machines like those used by the contractors' forces.

For all of the reasons that have been indicated in my correspondence and discussed in conference, it will be appreciated if you would give this claim further consideration and permit the claim to be paid, as the matter is being referred to our Chief Executive for such handling and submission to the Board as may be desirable, if no payment is authorized." [sic]

On August 22, 1966 Carrier's Director of Labor Relations responded to the General Chairman's letter as follows:

"This refers to your letter of July 27 referring to my letter of July 22 concerning claim alleging violation of the signalmen's agreement and demanding unspecified amounts of money as an exaction on behalf of certain named claimants and other persons not named because Carrier contracted certain work in connection with installation of CTC by signal forces on the north end of the Charlotte Division which you contend was signal work.

Your organization has already submitted to the NRAB the claim which you are attempting to assert. There is not therefore much point in our arguing the issues. However to set the record straight your various additional allegations are without basis and are denied. I note however that you now concede that at least one special machine—a tractor crane—needed to do the work which Carrier did not own was used. For the record there were others.

The work contracted was **not** signal work within the intent and meaning of the scope rule of the signalmen's agreement. Furthermore if it were signal work, Carrier's right to contract it is recognized in the scope rule of the agreement and by prior awards of the Adjustment Board."

On April 3, 1965 Carrier entered into a so-called stabilization of employment agreement with employees of the signalmen's class or craft, copy of which marked Carrier's Exhibit L, is attached hereto and made a part hereof.

Under this agreement all the claimants are "protected employees" and under Article IV of such agreement are not to be placed in a worse position with respect to compensation than the normal rate of compensation of positions to which assigned on October 1, 1964 plus any subsequent general wage increases. They are guaranteed the rate of compensation received on October 1, 1964 so long as they protect their rights and do not die or retire or are not discharged for cause. They cannot expect to receive more.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that all work in connection with Carrier's installation of a Centralized Traffic Control System should have been performed by the employees. The project involves more than 140 miles of track, between Greenville, South Carolina, and Salisbury, North Carolina. Although signal employees installed the signals, signal circuits, etc., some 20 to 40 men employed by two contractors were used to excavate for concrete foundations for the signal bridges and bungalows, to construct forms for concrete foundations, to set bolts in foundations, to pour concrete, to erect bridges for signals, and similar work.

The Agreement provides in Scope — Rule 1, in part, as follows:

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 undisputed that this work is a large installation. Thus the threshold question is whether or not it was "new work." If it was, then Carrier was justified in having portions of it performed by contractors.

The CTC has gradually been replacing the Automatic Block System. Until the conversion began about a decade earlier, ABS had been the prevailing signal system on the property. Some parts of the existing system were retained when Carrier installed CTC. According to Carrier's ex parte submission, it was a negligible part:

The signal system in service prior to the CTC installation will be completely retired. Approximately 4% of the existing facilities or parts of the old system will remain in service and will be reappraised and reused.

Regardless of the percentage—and we are not informed how the 4% figure was derived—it is apparent that the installation of the CTC system was a basic replacement of the ABS.

Significant guideposts in evaluating "new work" as against old are whether the existing facility is being repaired, maintained or even slightly modified, as contrasted with its actually being replaced. Indeed, if only minor modifications are involved in a project, it could hardly be described as "new work," as the term appears to be contemplated in the Scope Rule. In denying the Organization's contention on this point, Carrier in rebuttal emphasized that "new signals, power switches, electric locks, etc. were installed and the then existing automatic block system abandoned and retired . . ."

What has been involved in the installation of the CTC system on Carrier's property has not been the maintenance, repair or minor modification of an existing signal system, but the installation of a new system which largely replaces the old. That parts of the existing system remain, or remain in modified form, does not alter the essential character of the work. Nor can a project of this kind be characterized as old work because it is still a signal system, and still performs essentially the same function. Weighing the criteria that distinguish repair, maintenance or minor modification from actual extensive replacement, the Board must conclude that the CTC project meets the definition of new work.

This view is not altered because signal employees performed the work in question on other sections of the property. Rights which Carrier possessed are not waived thereby. The Organization also maintains that Carrier violates the Scope Rule if it contracts work which employees had done prior to the adoption of the present Scope Rule in 1942. Before that date (as well as since), it is said, Carrier's employees exclusively handled such assignments and the "past practice" exception in the Scope Rule therefore does not apply.

However, as the Scope Rule is worded, it does not say that if certain work were previously contracted out, the practice may continue. It makes the positive assertion that it was the past practice to contract out "larger installations in connection with new work." Thus Carrier retains the unlimited right to contract out any work meeting this definition, including installations which had formerly been handled in toto by Carrier's own men.

The Organization cites this Division's Award No. 10137 which asks, "What constitutes a new fence?" The Award gives the following answer:

"A new fence, in the Referee's Opinion, is a fence erected where none heretofore existed."

But a fence which replaces an existing fence, and is made of new materials, although on the very site of the old one, is a new fence — even if some of the old fence posts are retained. Similarly, a house built upon the foundation of its burned-out predecessor is a new house, even if some of the plumbing is retained and its function, design and appearance are duplicated. Practically and logically, a new house has been built. At some point it may be difficult to distinguish where repair or minor modification leaves off and new construction begins, but that is no problem in dealing either with a replacement fence or house or the CTC system on this property.

Therefore, the Board must find that Carrier's installation of the CTC system is "new work" within the meaning of the Scope Rule, and Carrier was permitted to utilize contractors on it.

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 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 24th day of May 1968.

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