



Award No. 16523
Docket No. SG-16889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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 has violated and is continuing to violate the Signalmen's Agreement by having recognized signal work performed by contractors or by persons not covered by the agreement and who hold no seniority or other rights with the Carrier to perform the signal work.

(b) Messrs. A. R. Davis, J. E. Naylor, T. P. Richardson, W. C. Duke, J. F. Shankles, J. L. Mitchell, J. A. Watts, W. H. Denney, J. N. Goff, J. W. Headden, Dan Carson, N. D. Carter, A. L. Roman, J. O. Patton, Jr., N. Trimble, Sr., A. McFalls, and J. F. Phillips be paid at their respective overtime rates of pay, on a proportionate basis, for all man-hours of signal work performed by the contractor and his forces, or by persons not covered and who hold no seniority or other rights under the Signalmen's Agreement; claim to begin sixty (60) days prior to the date of this claim, or October 30, 1965, and continue thereafter so long as the signal work in the vicinity of Rome, Georgia, is performed by persons not covered by the Agreement — or until a correction is made to eliminate the violation of the agreement as here involved.

(c) Carrier make a joint check of their records with the Organization, in the event of a favorable decision, to determine the number of man-hours of signal work, or the amount of money paid to the contractor and his forces, and/or to persons not covered by the agreement, in order to determine the hours of work and pay that would be due to each of the Claimants involved in the claim. (Carrier's File: SG-22627.)

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 extension of a Centralized Traffic Control (CTC) System and modifications of the Automatic Block Signal (ABS), Automatic Train Stop (ATS),

property in the vicinity of Rome, Georgia, as indicated in the claim.

We do not agree that the installation of CTC involving the Southern Railway, performed by the contractor, was a large installation, or that the Carrier had a right to have it done by contract, nor do we agree with other contentions and the decision in this case, because we have shown clearly that the agreement was violated when the Carrier had the signal work done by contract, and this letter is being made a part of the record in this case."

On September 6, 1966 Carrier's Director of Labor Relations replied to the Brotherhood's General Chairman as follows:

"Receipt is acknowledged of your letter of August 31 making reference to my letter to you of June 30, 1966 concerning claim you are attempting to assert because Southern and Central of Georgia contracted for installation of a centralized traffic control system in the vicinity of Rome, Georgia, a large installation in connection with new work.

I note that you now concede that a CTC system was installed; I also note that we are still in disagreement. One fact is certain, however, the agreement was not violated and claimants do not have a contract right to be paid the unspecified sums of money demanded by you on their behalf on unspecified dates.

We also hold to our position that the Adjustment Board will have no authority over part (c) of the claim in event you submit the claim to the Board and that we are not under any contractual or legal obligation to assist you in developing the claim which you attempt to assert. You as the proponent have the burden of proof."

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 H, 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 as long as they protect their rights and until such time as they retire, die or are discharged for cause. Having been guaranteed lifetime pay under the conditions outlined in the referred to agreement, they cannot expect more.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose as a result of the Carrier contracting certain work in the vicinity of Rome, Georgia, in connection with changes made in the signal system of the Carrier here involved and the Central of Georgia Railway (controlled by the Carrier).

The Scope Rule of the applicable Agreement provides in part:

"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."

Our recent Award 16337 (Friedman) discussed in detail the application of the above-quoted portion of the Scope Rule. We concur in the interpretation contained in that Award.

The issue involved in our present dispute, so far as the Scope Rule is concerned, is whether the work involved constituted a larger installation in connection with new work. The record is voluminous, and after careful study we conclude that the work did constitute a larger installation in connection with new work. The Carrier says that the work was begun about September 26, 1965, and was completed on or about February 19, 1966. The claim was initiated by the Petitioner on December 30, 1965, in behalf of seventeen named Claimants, with claim to begin sixty days prior to the date of filing, or October 30, 1965. The parties are in agreement that the work was completed on or about February 19, 1966.

Having reached the conclusion that the work involved constituted a larger installation in connection with new work, and subject to being contracted under the clear provisions of the Scope Rule, it is not necessary to pass upon other issues raised by the parties.

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 Employee 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 26th day of July 1968.

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