

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) Carrier violated and continues to violate the Scope of the current Signalmen's Agreement, as amended, when on or about and subsequent to August 1, 1966, it contracted, farmed out, assigned and/or otherwise allotted work generally recognized as signal work on the Coast Lines to persons not covered by the Signalmen's Agreement.

(b) Carrier be required now to pay Signalman G. A. Cochran and Signal Helpers H. M. Phifer and F. P. Schmitt at their respective pro rata rates for all hours worked by the Contractor's employees while constructing cement foundations and battery boxes used in installations of the Signal Department of the Coast Lines commencing on or about August 1, 1966, and continuing forward until the violation of the Signalmen's Agreement is stopped.

(c) Carrier be required now to pay also Signal employees W. L. Bennett, Bill James, and C. D. Millhouse at their respective pro rata rates for all hours worked by the Contractor's employees while constructing cement foundations, battery boxes and appurtenances, and cement products used in installations of the Signal Department of the Coast Lines commencing on or about August 1, 1966, and continuing forward until the violation of the Signalmen's Agreement is stopped. (Carrier's File: 132-57-24.)

EMPLOYEES' STATEMENT OF FACTS: On or about the year 1939 Carrier purchased and/or provided a cement mixer and all the necessary cement forms to construct the Signal Department's concrete foundations and battery boxes at the Signal Shop at San Bernardino, California, for the Coast Lines. Signal employees assigned to the Signal Shop at that location were assigned to construct the cement foundations and battery boxes for use of the Coast Lines Signal Department, and Signal employees have per-

2-23-66	Log, cement anchors 6"x6"x48"	400	400	0
3-25-66	Black, anchors 6"x18" Concrete	15	15	0
1-13-66	Slab 25"x25"x6" Concrete for Flasher Sig. Poles	250	153	97
2-23-66	Foundation concrete for Sheet Steel instrument case 4'-0" high with Anchor Bolts extension 5 1/4" above top with 2" thread and anchor bolt spacing "A" 2 3/4"	80	80	0
2-23-66	Slab 25"x25"x6" Concrete for Flasher Sig. Poles	125	0	125
2-23-66	Slab concrete 28"x34"x6"	40	40	0
2-23-66	Log, Cement Anchor 6"x6"x30"	250	250	0
4-14-66	Concrete Scanner Foundations	8	8	0
4-18-66	Foundation Concrete for Steel in- strument case 4'-0" high with Anchor Bolts extension 5 1/4" above top with 2" thread and anchor bolts spacing "A" 2 3/4" and "B" 18 1/2 Plan F-207 Rev. 3/14/45	50	16	34
4-18-66	Slab 25"x25"x6" concrete for flasher sig. Pole	100	0	100

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that the Carrier violated the Agreement when on or about August 1, 1966, it contracted out the work of making cement foundations and battery boxes to an outside contractor, Permacrete Products Corporation, South Holland, Illinois. The Organization contends that the work of making these prefabricated components for the construction of concrete foundations and battery housings has always been performed by signalmen for 27 years and that the work has generally been recognized as signal work as covered by the Scope Rule of the Signalmen's Agreement.

Carrier's position in this dispute is that on past occasions Carrier has purchased these items without complaint or claims being filed by the Organization; that Signal Department employes have not exclusively constructed such cement foundations and battery boxes used in Signal Department construction.

The Organization's primary argument is that by past practice Signal Department employes have performed the work in question. In support thereof, the Organization submitted five statements from Signal Department employes stating that they constructed cement foundations and battery boxes at San Bernardino for the past twenty-seven years. This contention is vigorously denied by Carrier, and in support of its refutation of said past practice contention by the Organization, Carrier presented as exhibits Requisition Stubs showing requests for said foundations which were from the Massey Concrete Products Corporation, and this was as far back at 1949.

Assuming that the Organization proved "exclusivity" to the work at San Bernardino, California by the statements of signed department employees, which Carrier emphatically denies, nevertheless, the Organization has the burden of proving that such work has always been reserved to it system-wide.

Therefore, inasmuch as the Scope Rule is void of specific language clearly showing an intent to assign the work in question exclusively to Signal Department employees, and having failed to prove by custom, tradition and past practice that such specific work has been exclusively reserved and performed system-wide by Signal Department employees, we must deny this claim.

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 16th day of April 1969.