

Award No. 18931
Docket No. SG-18920

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

(a) The Union Pacific Railroad Company violates the current Signalmen's Agreement effective April 1, 1962, when it fails and/or declines to apply Rule 1, Scope, and Section (b) of that Rule, by assigning employes not covered by the Scope and Classification Rules to perform work necessary to construct signal pole line between Cayuse and Gibbon, Oregon.

(b) Mr. M. J. Morrison, Senior Signalman on the Signal Gang assigned to this pole line work, be allowed eight (8) hours at the time and one-half rate, in addition to the straight-time rate of his assignment for each date, March 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, and 29, 1968, April 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, and continuing on a day to day basis so long as the Carrier continues to violate the agreement.

(c) In the event Claimant Morrison vacates the position of Senior Signalman in the Signal Gang assigned to perform the work of constructing the pole line between Cayuse and Gibbon, Oregon, that the employe assigned to the position of senior signalman in such signal gang shall be considered the claimant.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the present parties bearing an effective date of April 1, 1962, which is by reference made a part of the record in this dispute. The controlling provision in this dispute is:

"RULE 1. Scope. This agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department who construct, install, maintain and/or repair the following:

* * * * *

(b) High tension or other lines, of the Signal Department, overhead or underground, poles and fixtures, wood, fibre, iron or clay

1967 on this same division and same seniority district in relocating signal facilities to accommodate the construction of the John Day and Lower Monumental Dam.

The Organization was further apprised of numerous instances where company-owned roadway locomotive cranes and other larger units of company-owned work equipment were operated by employees represented by the Brotherhood of Maintenance of Way Employees Organization when utilized to excavate for pole holes and trenches, to set signal poles and to distribute signal material which had never been protested by or in behalf of signal employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier engaged outside forces when it was engaged in upgrading and relocating its signal pole line between Cayuse and Gibbon, Oregon. Because of the terrain Carrier determined that hand digging the holes or the use of standard auger boring machines would not effectively accomplish the work. It further determined that a large machine, known as a trencher-backhoe was required.

Carrier does not own the required equipment and accordingly it contracted for the equipment with a contractor who furnished both the machine and employees skilled in its operation.

Several defenses to the claim are raised by Carrier. However, since the case fits a recognized exception to the application of the Scope Rule it is only necessary to deal with one of them.

While it dealt with a different factual situation, Award No. 9335 contains a clear expression of principle which the Board has applied in a number of cases similar to this one. There the Board said:

“* * * as a general rule Carrier may not contract out work embraced within collective bargaining agreements. On the other hand, it appears settled that carriers may farm out large projects presenting novel situations or calling for the use of special skills, equipment or material. See, e.g., Awards 4776, 5304, 5563, 6492 and 7805.” (Emphasis ours.)

The record in this case shows that Carrier was faced with a situation requiring the use of special equipment and skills. Accordingly its decision to use outside forces was not a violation of the applicable Agreement.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.

Dissent to Award 18931, Docket SG-18920

Award 18931 is in error.

It is axiomatic that no decision is better than that upon which it relies as precedent. In this case the Majority rely on Award 9335, and the Labor Members' Dissent thereto shows the error committed.

We would here additionally point to the fact that each Award cited in the quotation from Award 9335 disposes of a dispute between a Carrier and its employees represented by the Brotherhood of Maintenance of Way Employees. The present employees are represented by the Brotherhood of Railroad Signalmen, a bargaining agent completely independent of the Maintenance of Way. Hence, no award based upon another craft's Agreement can be valid.

W. W. Altus, Jr.
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Labor Member