Award No. 19156
Docket No. SG-15912

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ALTON AND SOUTHERN RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern Railroad:

> For all Signalmen of the Alton and Southern Railroad Signal Department at the time and one-half rate, on a continuing basis and to include 60 days prior to date claim was originally submitted in letter dated July 25, 1964, account section men of the Alton and Southern Railroad and electrical contractors performing signal work in Davis Hump Yard. All hours and number of men shall be accounted for, from the Alton and Southern records, after all work on the Davis Hump Yard has been completed.

EMPLOYES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute is based on our contention that other than signal employes performed signal work in Davis Hump Yard.

When we use the term "signal work" in this dispute, we are referring to all work covered by the Scope of the Signalmen's Agreement in effect on this railroad. This is very important because "signal work" on this railroad includes work which may, on other railroads, be referred to as "communications" work, "electrical" work, or "signal" work.

Employes classified in and covered by the Signalmen's Agreement on this railroad are not restricted to work on signals and signal systems as on some railroads; they also perform work on Carrier's **radio, microwave, radar, electrical** and **communications equipment AND systems.**

On some railroads, employes represented by this Organization only work on the railway signals and signal systems. On some they also work on communications equipment and systems. On this railroad, they work on all of this equipment and all of these systems; such work is generally placed in three categories: (1) signal work, (2) communications work and, (3) electrical work. In the instant case, the term "signal work" may be referred to, for the sake of brevity, to include all work covered by the Scope of the effective Signalmen's Agreement.

There is another portion of our Statement of Claim about which there should be no misunderstanding, and that is the name "Davis Hump Yard." The Davis Hump Yard is a modern classification yard; such a yard is some-

the reasons set forth above and for the reasons set forth in Mr. Suyo's letter to you of August 18, 1964.

Yours very truly,

/s/ E. J. Maher
Director of Personnel"

Mr. Highley wrote to Mr. Maher on February 25, 1965, to tell him his decision was not acceptable.

Mr. Jesse Clark wrote to the Third Division, National Railroad Adjustment Board on October 25, 1965, giving notice of his intention to file an ex parte submission in the dispute.

OPINION OF BOARD: Among the defenses advanced by Carrier is the contention that the Claim is not properly before this Board. As this is a threshold question the disposition of it is necessary before considering any other facet of the Claim.

It is well settled that Claims need not include the name of those involved. What is necessary is that those adversely affected be readily ascertainable. Awards 12999, 11372 and others.

The record reveals the following: (1) in the denial of the Claim at the first step by the Signal Supervisor in his letter of August 18, 1964 he stated in part:

> "The lack of merit of your claim notwithstanding, it is vague and indefinite. Your claim is for all signalmen of the Alton and Southern Railroad. If the Signalman's Agreement was violated in a manner in which we are liable for time claim (and we deny that it was), such claim must be made for a specific named employe of the Signal Department. A claim for all signalmen is entirely improper." (Emphasis ours.)

(2) at the denial at the second step the Ass't. Chief Engineer in his letter of November 13, 1964 made no statement concerning the alleged procedural defect as such; (3) in the denial at the third step by the Director of Personnel in his letter of February 5, 1965 he stated in part:

> "At our conference of January 27, 1965, I informed you that irrespective of the merit, or lack of merit, of your claim, the manner in which it was presented and processed through the grievance procedure was not proper. Your claim is vague and indefinite in that it claims time for all employes of the Signal Department, and is not specific with respect to the amount of time claimed." (Emphasis ours.)

Thereafter by letter of February 25, 1965 the Petitioner stated the following in its letter to the Director of Personnel:

> "Notwithstanding it is a matter of record the men involved in this claim and the number of hours claimed, we will once again, as we have before, to you and to Mediator Della Corte, list the names of the employes, that were employed prior to this claim and again point out, as we have before, that all employes hired since the ef-

fective date of this claim are to be included and those that have quit or now deceased will only be effected (sic) on the dates they were employed with the Carrier. Those included at time this information was given to Carrier were:" (Thereafter 15 names are listed.)

The matter is raised again by Carrier in its submisson received by this Board on January 22, 1966 where in it contends, that

> "There is no provision in this agreement for consideration of claims of unnamed individuals for unspecified dates. If a claim is submitted 'by' an employe himself, obviously he is named. If claim is presented 'on behalf of the employes involved', the identity of the claimant must be known, because the rule clearly requires that he be named as claimant.
>
> The instant claim filed with this Board was not filed 'on behalf of the employes involved' but for 'all Signalmen of the Alton and Southern Railroad * * *' and requests 'all hours and number of men shall be accounted for from the Alton and Southern records, * * *'. This does not satisfy the requirements of Rule 700(a) quoted above. The carrier submits, therefore, that this claim should be denied in its entirety as a 'blanket claim' not provided for in the controlling agreement. It is not properly before your Board."

One of Carrier's' defenses listed in its submission was "a. The instant claim has not been properly presented, or processed in accordance with the controlling agreement." In its rebuttal, however, Carrier while listing five of the six defenses stated in its submission significantly omits a defense based on the alleged procedural defect. Moreover, Carrier does not refer to the alleged procedural defect in any way in its rebuttal.

No where in the record is there any refutation of Petitioner's statement in its letter of February 25, 1965 to the Director of Personnel. Moreover, in its denials and in its submission Carrier did not state that it did not know the employes involved it merely stated the claim was "vague and indefinite", or "a claim for all signalmen is entirely improper" 'or that the claim was not "specific with respect to the amount of time claimed."

The Claim before this Board, we find, is the same Claim that as processed on the property.

Carrier insists that Claimants must be named. The Awards have held differently. What is required is that the Claimants be "readily ascertainable". A claim for all Signalmen is not improper as the record reveals that all Signalmen are involved The allegation that the claim was not specific as to time claimed is without merit. It is a continuing claim for 60 days prior to the date of filing and continuing until the disputed work is completed. Thus, we find, based on the foregoing, including the omission of the procedural defense by Carrier in its rebuttal, that the claimants are "readily ascertainable" and that amounts due can be easily determined from Carrier's records. (cf Award 11372)

We will now consider the merits of the Claim. It involves (1) the use of outside forces employed by an electrical sub-contractor in the performance of signal work in the seven story Retarded Control Tower being constructed for Carrier on its property in its new Hump Yard and (2) the use of section men to perform signal work in the Hump Yard. The record shows that the

outside electricians were used from June 8 to September 3, 1964 and that the section men performed the work in dispute during the same period.

We will deal with the Claim arising out of the use of outside forces to do the electrical work in the Retarder Control Tower first. The parties are in agreement that the Scope Rule covers "electrical and communication equipment systems" as well as traditional "signal" systems. The work performed by the outside forces involved electrical work as distinguished from purely signal work but it is within the Scope of Petitioner's agreement.

Carrier is a switching and terminal company which employs approximately 675 people. It operates in the St. Louis-East St. Louis switching district. It became engaged in the construction of a completely new automatic retarder yard, the site of the dispute, in 1962. The program entailed the expenditure of some $7,000,000.00. The Retarder Control Tower herein had a total construction cost of $237,000.00.

On March 23, 1964 a conference was held between Carrier and Petitioner during which Carrier explained the need to contract for the construction on the seven story tower and confirmed its position by letter dated April 21, 1964. In essence Carrier explained that it did not have the force needed to perform the electrical work in the building and that it had been unable to recruit forces to perform the work involved. Carrier stated that the only work to be withheld from Petitioner was the electrical work but such work as installing cables to bring the sources of power to the power switch gear box in the building as well as all the wiring of the process control systems, switches, etc. would be reserved for Petitioner. Petitioner does not dispute Carrier's statement but contends that Carrier was not justified in contracting the work out because, among other things, Carrier had sufficient time to build up its forces in anticipation of the construction. Carrier rejected Petitioner's position. The contract was let to a General Contractor to construct the Tower. The General Contractor sub-let the electrical work to an electrical contractor. The Contractor's electricians spent 1112 hours during the period noted above in the performance of the disputed work. During the same period Signalmen were paid 8669 hours at straight time and 416 hours at the overtime rate.

Petitioner's position is essentially that Carrier should have reserved the electrical work done by the sub-contractor for Signalmen. In effect Carrier would have had to act as the electrical sub-contractor. There is no requirement that Carrier fragmentize the job. The only work covered by the parties' Agreement that was given to the outside contractor was that necessary to the construction of the building. All other covered work was performed by Carrier's employes, it not being necessary to the construction. In our view we find that the construction of the Tower from the ground up was of sufficient magnitude to have taken it outside the contemplation of the Scope rule in the agreement and therefore Carrier was free to excerise its managerial prerogatives in contracting the work out. Award 4158, 13099, 18931, and case cited therein.

On the basis of the foregoing we will deny the claim as it relates to the use of outside electrical forces in the Tower.

We believe to the contrary with regard to the use of Section men in their performance of Signalmen's work. Here we do not have the problems which confronted Carrier in the construction of the Tower. This was railroad work, albeit caused by the expansion program. It cannot be justified by asserting that the use of section men to help signal men is a long standing practice on

the property. The work has been reserved exclusively for Petitioner and Carrier could not remove it from the agrement without a superseding agreement giving it that right. It has been held that the contract is superior to the practice. (Award 4534) Accordingly we will sustain the claim as it relates to the use of section men doing Signalmen's work. The record shows that 566 hours were devoted to the work by section men. This is not disputed by the Petitioner, thus the Claim is allowed for 566 hours at the pro-rata rate. (Award 15689)

Pursuant to Transportation-Communication Employes' Union v. Union Pacific Railroad Company (385 U.S. 157) the possible intervenor in the matter, Brotherhood of Maintenance of Way Employes, was notified of the dispute and invited to make a submission to this Board. It responded that it was not a party in interest in the matter and would make no submission. In view of this unequivocal disclaimer of interest we have discharged our obligation under the above cited case by finding that the assignment of Section men to do Signalmen's work was in violation of the 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 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; and

That the Agreement has been violated.

AWARD

Claim sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1972.

Concurring Opinion in Award 19156, Docket SG-15912

Our concurrence in Award 19156 does not include the holding that, with reference to electrical work, "There is no requirement that Carrier fragmentize the job" and that "* * * the construction of the Tower from the ground up was of sufficient magnitude to have taken it outside the contemplation of the Scope rule * * *."

When the Carrier and its Signalmen made the confronting Agreement they reserved the work in dispute to those employes, as the award correctly

states. They did not, in any way, indicate that they contemplated any exception whatsoever. This Board was established solely for the purpose of interpreting and applying Agreement; it is not empowered to change those Agreements through the guise of an award as has occasionally, and again here, been done.

That part of the award covering work performed by Maintenace of Way forces is completely correct.

W. W.'Altus, Jr.
W. W. Altus, Jr.
Labor Member

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