

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19268
Docket Number SG-19194

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Penn Central Transportation Company, Debtor)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Lines West of Buffalo) that:

(a) Carrier violated the current Signalmen's Agreements, as amended, when it permitted the Railroad Accessories Corporation to install highway crossing protection at Melody Lane Highway near Portage, Michigan, during August, 1969.

(b) Carrier should now be required to pay, as a result of this violation, additional compensation to signal employees as follows for August, 1969:

Signal Foreman M. E. Campbell
Signal Mechanics E. Garner, W. C. Schroeder and N. Peterson
Assistant Signal Mechanics J. J. Newby and D. L. Knoch

19th and 20th - 8 hours pro rata and 4 hours overtime
21st - 8 hours pro rate and 6 hours overtime
22nd - 8 hours pro rate and 5 1/2 hours overtime
23rd - 10 hours overtime
24th - 12 1/2 hours overtime
25th - 8 hours pro rata
(Carrier's File: SIG. C-12)

OPINION OF BOARD: The Organization learned from Carrier in November of 1967 that a substantial amount of signal work was to be performed in the Northern Region in relation to crossing protection projects and that Carrier was considering contracting out some of this work to signal construction firms.

The Organization informed Carrier by a copy of a letter dated November 22, 1967, that it was against contracting any signal work to outside firms, that it was not impressed with Carrier's argument that it could not employ sufficient personnel, that in various parts of the country signal employees were being furloughed and that there was no demonstration on the part of Carrier of any attempt to recruit signal personnel.

Again on March 6, 1969, B. H. Steuerwald, Vice-President of the Organization advised Carrier that the Brotherhood was aware that Carrier was talking about contracting out highway crossing protection in Michigan and that the "Organization has been continuously harassed by the Penn Central Management in that they constantly tell us that they want to, or are going to, contract out signal work that comes within the Scope of our respective agreements."

A Portage, Michigan crossing protection project was ordered by the State of Michigan Public Service Commission on July 18, 1968 and the order was subsequently amended on July 31, 1969 to make changes in the specification requirements.

The Order of July 8, 1968 called for Carrier to have installed and operative modern automatic flashing-light signals in conjunction with the opening to the Public of the crossing.

The dispute now before the Board stems from the fact that Carrier contracted out to the Railroad Accessories Corporation the work of installing highway crossing protection at Melody Lane Highway near Portage, Michigan on the dates of August 19, 1969 through August 25, 1969 and it is the position of the Organization that Carrier violated the Signalmen's Agreement when it contracted out this work.

There is no question about the fact that the Scope of the Signalmen's Agreement specifically includes the work of installing highway crossing protective devices and appurtenances thereto.

Moreover, the general rule is that a Carrier may not contract with others for the performance of work within the Scope rule of an agreement and there are few exceptions to this rule.

On August 19, 20, 21 and 22, 1969 when employees of the Railroad Accessories Corporation were installing the crossing protection at Portage, Michigan, the Claimants worked their regular 10 hour work day installing certain bells for the General Food Company at Battle Creek, Michigan.

Claimants were on their rest days August 23, 24 and 25, 1969 when employees of the aforesaid outside corporation finished up the crossing protection at Portage.

The burden of proof in this case is on the Carrier to demonstrate by the presentation of facts in evidence that its determination to contract out work can be justified in the light of all the circumstances.

Carrier does not dispute that the work contracted out was of the type that the Carrier's signal department employees generally performed but it asserts that it had been unable to hire and retain a sufficient work force of construction and repair employees on its Northern Region to perform the necessary work. Carrier also contends that time was of the essence with the Portage project because the work of installing the flashing light crossing protection had to be coordinated with the work of the State of Michigan Highway Department extending Melody Avenue across the Carrier's tracks so that Carrier's work and the highway construction work would both be completed about the same time.

The Board would point out that Carrier is under a duty to have a sufficient number of signalmen available for its needs and Carrier knew for more than a year that a crossing protection installation would be necessary at Portage.

In addition, Carrier failed to demonstrate that it had made a diligent effort to meet its responsibilities of maintaining a sufficient force of signal employees.

This Board has held before, and it is basic in order to maintain the Scope of any collective agreement, that work which belongs to those under an agreement cannot be given away to others not covered by the agreement except under circumstances that are so unusual as to fall within recognized exceptions to the general rule.

Even if Carrier had made a reasonable effort to maintain a sufficient force of signalmen, it would be obligated to show that the work which had been contracted out could not have been performed by the Claimants on rest days, by way of overtime, or by rearrangement of their work schedule. The Board finds that Carrier has not met its burden of proving that it could not have worked existing signal employees on weekends or extra hours during the week to perform the work.

The six Claimants in this case are requesting payment of a total of 492 hours and Carrier contends that any consideration by the Board of monetary payment to the Claimants should be related to the 271 man hours worked by contractor's employees.

We are persuaded that the outside contractor's employees worked 170.5 hours during the period August 19-August 22 when Claimants were on duty and under pay. With respect to these hours, compensation is allowed at the regular rate, such compensation to be divided among the Claimants on a pro rata basis. As to the 100.5 hours worked by the contractor's employees on August 23, 24 and 25, it would appear that Claimants have been deprived of overtime work for which they should receive pay at the overtime rate. Such pay is allowed and is to be divided among the Claimants on a pro rata basis.

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 violated.

A W A R D

The Claim is sustained to the extent of 170.5 hours of compensation at the regular rate and 100.5 hours of compensation at the overtime rate, to be divided among the Claimants on a pro rata basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kallen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.