

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19430
Docket Number SG-19291

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required and/or permitted employees of Augtin Electrical Company to raise the signal pole line over Pine Street Crossing in Griffith, Indiana, on Saturday and Sunday, June 21 and 22, 1969, by setting four poles and changing 21 line wires.

(b) Carrier should be required to compensate the following signal employees at one and one-half times their respective rate of pay for two eight-hour days:

Signal Foreman W. J. Bryant; C. Campeti, C. Campbell, R. Clemens and all other employees in Signal Gang #51.

Leading Signal Maintainer D. H. Young, Hammond, Indiana, and the Signal Maintainer also headquartered at Hammond.

[Carrier's File: 173-SIG: General Chairman's File: 352]

OPINION OF BOARD: Claimants contend that Carrier violated the Scope Rule of the Agreement when it required and/or permitted outside employees to perform work of Signal Department Employees. The Claimants, Signal Foreman W. J. Bryant and all other employees in Signal Gang #51, Leading Signal Maintainer and the Signal Maintainer, Hammond, Indiana, seek compensation awards for the alleged violation.

FACTS OF RECORD

The town of Griffith, Indiana, wanting a new grade crossing constructed on Carrier's property at Pine Street, Griffith, Indiana, filed the appropriate Petition with the State Public Service Commission on December 3, 1968. In the proceeding on that Petition, the Carrier opposed the town's proposal and offered an alternative proposal. By order of May 29, 1969 the Public Service Commission approved the town's proposal; however, on June 15, 1969 the Carrier filed a Petition for reconsideration of the Commission's order approving the town's proposal.

On Saturday and Sunday, June 21 and 22, 1969, before hearing or determination of Carrier's Petition for reconsideration, the township of Griffith instituted grade crossing construction work at Pine Street, Griffith, Indiana. This work included the raising of a portion of the Carrier's signal pole line by a private electrical contractor.

On June 27, 1969, the Carrier filed with the State Public Service Commission a supplement to its June 15, 1969 Petition for reconsideration. In its supplement the Carrier alleged that on June 21, 1969 the town of Griffith, Indiana, had "trespassed on the Railroads rights-of-way and constructed a grade crossing at Pine Street, and unlawfully tampered with and moved the railroads' communication and signal wires thereat." The Carrier also alleged that the trespass had been conducted "in secrecy without notice to the railroads."

On July 22, 1969, the Organization filed a grievance alleging a violation of the Scope Rule of the Agreement by reason of the electrical contractor raising a portion of the Carrier's signal pole line. By letter dated August 8, 1969, the Carrier responded that the work had been done in the course of trespass against Carrier, that the work would have to be done over because of its failure to satisfy Carrier's standards, and that part had already been redone by Carrier. In its submission herein Carrier asserts that all of the signal work has been redone by signal employees. This statement is not contradicted anywhere in the record.

RULINGS ON PETITIONER'S CONTENTION

The Petitioner contends that the Scope Rule clearly covers the work in dispute and that the Carrier failed to prove justification in permitting the disputed work to be performed by a private contractor.

We will not discuss or resolve these contentions, for, on the record before us, the case must be decided on another ground.

On June 21 and/or 22, 1969 a contractor for the town of Griffith, Indiana, entered upon Carrier's right-of-way and raised a portion of Carrier's signal pole line. The record indicates that Carrier thereafter promptly redid all of the work done by the contractor, including installing new poles, using only its Signal Department Employees. In these circumstances we cannot find that the Agreement was violated.

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;

Award Number 19430
Docket Number SG-19291

Page 3

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.