

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19706
Docket Number SC-19388

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Clinchfield Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad Company that:

(a) Carrier has ignored and continues to ignore the Signalmen's Agreement, particularly the Scope, **when, commencing** on or about March 9, 1970, it contracted out pole line installation (setting poles, stringing signal wires) at **Haysi**, Virginia.

(b) Carrier should be required to compensate signal **employees** as follows:

Foreman **J. R. Wiggs** 8 hours time-and-one-half rate **at** \$6.0863 for below listed dsys, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added as long as violation exists.

Leading SC&E Man P. E. **Booher**, Jr., 8 hours each day at \$5.8232, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

Leading SC&E Man Raymond Wilson . . . 8 hours each day at \$5.8232, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Man Harry B. Sykes 8 hours each day at **\$5.7177**, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Man **J. E. Richards** 8 hours each day at \$5.7177, **March** 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Assistant **I. Buchanan** . . . 8 hours each day at \$5.0669, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Helper D. R. Pierson . . . 8 hours each day at \$4.7334, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Helper R. E. **Treadway** . . . 8 hours each day at \$4.7334, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

OPINION OF BOARD: The claim alleges a diversion of Scope covered work in connection with the construction of a six-mile signal pole line beginning at **Haysi** Junction, Virginia.

The Organization contends that the property in dispute is a part of the Clinchfield Railroad; the Carrier denies that contention, stating that the **Haysi** Railroad Company is a separate corporate entity and separately recognized carrier. The Petitioner has presented no evidence of probative value to sustain its contention, and we must therefore treat the **Haysi** Railroad as a corporation and carrier separate from the respondent Carrier. It appears from the record that the **Haysi** Railroad Company contracted out pole line construction and installation work.

In Award No. 19369 we said:

"Numerous disputes have been before the Board where two or more rail Carriers have found it necessary and desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed. It has been consistently held that the work to be performed under such circumstances falls to the Carrier and its employees who by reason of such Agreements between **the** Carriers, have the superior right or contractual duty to perform it. See Awards 11002, 6210, 3450, among others. Applying this principle to our present dispute, so long as the C & O, by reason of its contract with the Wabash (now N & W) had a right **to** construct and maintain the interlocking facility, then such signal work belonged to C & O signal employees. However, when the two Carriers proceeded in a lawful and regular manner to change the Agreement between them to provide that each would install, operate and maintain the necessary signal facilities on its own properties and right of way, the rights of **C&O** signal employees to install and maintain signal facilities on the Wabash (now N & W) ceased as the Scope Rule cannot extend to work that does not belong to the Carrier, but only applies to work that the Carrier has to offer (Award **13056**)."

The Petitioner has not shown that Carrier had control over the work in dispute or that it was for Carrier's operations. Hence, it was not covered by the Agreement, and we must dismiss the claim.

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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.

A I I A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *E. A. Killen*
Executive Secretary

Dated at **Chicago, Illinois**, this **13th** day of **April** 1973.