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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19718
Docket Number SG-19394

Frederick R. **Blackwell**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Seaboard Coast Line Railroad Company violated and continues to violate the Signalmen's Agreement, particularly the Scope, **when** it contracted to Union Switch and Signal Company or persons not **covered** by said Agreement, recognized signal work in connection with the installation of signal facilities at or near East Bay, and on the assigned maintenance **territory** of Signal Maintainer J. C. Baldwin, Tampa, Florida.

(b) Seaboard Coast Line Railroad Company pay to Signal Maintainer J. C. Baldwin and employees of SCL Signal Gang No. 7, D. E. **Winfrey**, Foreman, namely: L. H. Hightower, W. T. **McCuiston**, J. R. **Coullette**, Jr., J. H. Huling, Jr., D. L. Hart, G. L. Jackson, W. D. Gunther, R. L. **Mathews**, D. E. **Winfrey**, and any other signal employees whose assignment to Signal Gang No. 7 is concurrent with the violation, the amount equal to the man-hours of signal work performed by the contractor's forces on a prorated basis, at their respective hourly overtime rate of pay. This claim **commencing** the first date of the violation **or** 60 days retroactive from this date (February 6, 1970) and continuing thereafter until the facility is completed or until a correction of the violation is **made**.

(c) Seaboard Coast Line Railroad Company make a check of its records in cooperation with the Organization, in event of a **favorable** decision, to determine the number of man-hours of signal work performed by the **contractor's** forces, in order to determine the hours and/or pay that **would** be due **each** claimant.
(Carrier's File: 15-63)

OPINION OF BOARD: The Carrier was extensively involved in the establishment of a large phosphate storage and loading facility, formerly designated **as Rockport** and situated at or near Tampa Bay, Tampa, Florida. During construction of Rockport, the Carrier, under date of **November** 18, 1969, let a contract to Union Switch and Signal Construction Company for the construction and installation of signal facilities. On June 19, 1970, **the** Carrier assigned the signal facilities at **Rockport** to one of its Signal Maintainers effective June 22, 1970. Shortly afterwards, on July 16, 1970, **Rockport** was **completed** and accepted for use by Carrier as the lessee under a lease agreement **with** U.S. Leasing International, Inc. as lessor.

Rockport was a project of substantial magnitude, entailing a total cost in excess of \$12 million. The project comprised a number of major components, all of which were completed by contract with outside firm. The completed project consists of receiving tracks, a gravity **hump** classification yard and a storage yard; a rotary dumper; an automatic car positioner; a warehouse 890 feet in length, with capacity for storing 148,000 tons of dry phosphate, and housing a system for receiving, grading, and storing phosphate, and transferring it to conveyors for loading into ships; a covered conveyor system with dust control apparatus to prevent air pollution; a ship loader and a loading dock; a standby berth for a waiting ship; and necessary office and service buildings.

Rockport is situated on a 268 acre tract of land owned by the Atlantic Land and Improvement Company and Leased to U. S. Leasing International, Inc. Though Atlantic Land is a separate entity from Carrier, it appears from the record that Atlantic is controlled by Carrier.

Petitioner contends that the signal work performed by the Union Switch and Signal Construction Company should have been performed by Carrier's signal employees and that the contracting out of such work violated the Agreement. The Carrier's position is that the disputed work is not covered by the Agreement because **Rockport** is owned by and was constructed and paid for by U. S. Leasing. Carrier further asserts that, during the construction of Rockport, it served as the agent of U. S. Leasing and in that capacity let all of the contracts involve in the project including the contract to Union Switch.

In their submissions the parties have advanced several arguments in support of their respective positions. However, the controlling issue here is whether the Carrier had control of the disputed work, for, as this Board stated in Award No. 13745:

"The scope of the Agreement is confined to work on Carrier's property or elsewhere within Carrier's control....."

On the question of control Petitioner submitted evidence that signs at the property indicated ownership by the Carrier, that public land records indicated that Atlantic Land Company was an arm of Carrier, and that a news item in a Carrier publication indicated control of the **Rockport** project by Carrier. Petitioner also cited as evidence of Carrier control the following statement from a December 31, 1969 letter by Carrier:

". . . Upon completion of the facility, it will be leased by U. S. Leasing to Seaboard Coast Line and we will thereafter maintain and operate the facility. To assure that the facility meets our needs, we are serving as an agent in drawing the necessary plans and specifications and in letting of contracts for their account covering construction of the entire terminal, including buildings, tracks, and associated facilities."

For its part the Carrier submitted a "Consent and Agreement" which related to Carrier's November 18, 1969 contract with Union Switch for signal work, and which was executed by Union Switch on February 23, 1970. On its face this document gives the consent of Union Switch to the assignment by Carrier of its rights under the November 18, 1969 contract to certain trustees and that Union Switch "Agrees to perform such contract in accordance with the directions of Railroad acting as Agent for the Trustees." Other documents submitted by Carrier, on their face, show: 1) that U.S. Leasing "agreed to pay the construction costs" of the **Rockport** project; 2) that Atlantic Land Company leased the 268 acre tract of land on which **Rockport** was situated to U. S. Leasing for a term of 24 years; 3) that Rockport, upon completion, would be operated by Carrier as lessee; and 4) that U. S. Leasing held full Legal title to **Rockport** during its construction and continued to hold such title after Carrier accepted the facility as lessee on July 16, 1970. Carrier's documents also showed, on their face, that some construction was underway at **Rockport** on March 1, 1968, the date on which Carrier entered into its agreement to lease **Rockport** upon completion.

In assessing this evidence, and the record as a whole, it becomes clear that Carrier played a major role, perhaps the lead role, in both the planning and the construction of the **Rockport** facility. This does not necessarily equate with control, however. The record makes it clear that Carrier was not awarded a contract to install the signal facilities and other railway components of the **Rockport** project. Until Carrier took over **Rockport** as lessee on July 16, 1970, Carrier acted as agent for U. S. Leasing International, Inc. Thus, in order for Petitioner to prevail, the evidence must show that control of the disputed work was within the scope of Carrier's agency during the construction phase of the project.

Petitioner's evidence tends to show that Carrier probably owned the 268 acre tract of land on which **Rockport** was constructed. However, Carrier's evidence shows that the Land was leased to U. S. Leasing for 24 years and that U. S. Leasing retained full title to the **Rockport** facilities both during construction and after completion of Rockport. A leasehold interest in the land was thus subject to the ownership rights of U. S. Leasing. Consequently, there is no basis on which the land could be said to give Carrier control of the project. We also conclude that Carrier's December 31, 1969 letter does not constitute an admission of control. This letter does admit that Carrier's agency aided its own interest as the future maintainer and operator of **Rockport** and, hence, one might speculate that Carrier's agency involved a substantial degree of control over the project. However, speculation is not evidence and the letter as it stands does not amount to proof of control. Therefore, on the whole record, we conclude that the evidence does not establish that the disputed work was within Carrier's control so as to bring the disputed work within the scope of the Agreement. Accordingly, we shall 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

The claim is dismissed.

A W 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 30th day of April 1973.