

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20156
Docket Number SG-19911

Irwin M. **Lieberman**, Referee

(Brotherhood of Railroad Signalman

PARTIES TO DISPUTE: (

(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 that:

(a) Seaboard Coast Line Railroad Company violated and continues to violate the Signalmen's Agreement, particularly Role 1, **Scope**, when outside contractor forces were permitted to install a shielded aerial cable to replace open signal circuit control wires **mounted on crossarms** at M.P. S-0.3 to M.P. S-10.9, and M.P. A-0.5 to M.P. A-4.5 on former ACL RR Line.

(b) **Seaboard** Coast Line Railroad Company should pay to the following **employees** at their respective overtime rates of time and **one-half** for the actual time that contracted forces worked in connection with the hanging and lashing of aerial cable and installing of line junction boxes including terminated **aerial** cable in junction boxes, and any other signal work connected with said project. The total number of hours worked by contractor forces will be divided equally **among** the **employees** named within this claim:

Gang No. 2 - **P. L. Ellis, Jr.**, Foreman

Signalmen

- R. D. **Platt**, R. D. Morgan, G. M. **Mullis**,
J. R. Stubbs, R. **J. Peete**

Asst. Signalmen

- R. L. Jacobs, J. Dickinson Morris, **J. D. Dismuke, Jr.**

Gang No. 8 - D. W. Weaver, Foreman

Signalmen

- F. R. **Taylor**, J. W. Brown, B. J. Strickland, H. M. Edwards, L. H. Capps

Asst. Signalmen

- M. R. Chappell, R. L. Lynch, J. D. **Comer**,
D. G. Morris, D. D. Cotton

Gang No. 9 - M. E. **Drury**, Foreman

Signalmen

- L. E. Norris, Ii. C. Creed, Jr., W. J. **Thorne**, A. E. **Lunn**

Asst. Signalmen

- M. **J. Swindle**, D. J. Berryhill, G. O. Cameron, W. H. Joyce

(c) Seaboard Coast Line Railroad Company should make available the time records of H. P. Foley Construction Co. which were kept by said Company in connection with the installation of signal aerial cable and are available to Seaboard Coast Line Railroad Company, as a basis for just settlement of this claim.

[Carrier's File: 15-63]

OPINION OF BOARD: Since 1912, near Richmond, Virginia, the Virginia Electric and Power Company's 115 Kv Transmission line occupied Carrier's right of way **paralleling** its **communication** and signal wire lines. In 1970 the Power Company desired to upgrade and increase the power load of its transmission line. It was recognized that this upgrading would seriously interfere with the proper functioning of the adjacent **communication** and signal **lines** of Carrier. Carrier and the Power Company entered into an arrangement whereby the Power Company at its sole expense would eliminate the problem by providing new aerial shielded cable **communication** and signal lines on existing poles to replace the open wire lines. It was agreed that the new shielded cable facility would be conveyed to Carrier only after satisfactory completion of the installation whereupon Carrier's employees would then transfer the appropriate circuits from the old open wire facility to the new shielded cable. The Power Company engineered the work, supplied the materials required and hired an outside contractor to perform the installation - wherein lies the basis of the Claim herein.

The Carrier argues that the work in question was solely for the account of and at the expense of the Power Company. Further it is urged that the installation required the use of special equipment not owned by Carrier; this contention is not denied by the Petitioner who states that the equipment could have been leased. *The Organization* alleges that the work is **indisputably** reserved by the Scope of the Agreement to employees of Carrier's Signal Department and the Agreement accords no relief to Carrier. It is further averred that the work involved only signal circuits, not power circuits and the Power Company had no authority or jurisdiction to perform the work unless granted by Carrier.

In a long series of **Awards** going back to 1951, we have held consistently that work which is not for the exclusive benefit of Carrier and not within Carrier's control may be contracted out without violation of the Scope Rule (see for example Awards 5246, 6499, 13745 and 19718). Petitioner cites the Award in Public Law Board No. 387 in support of its position. That Award must be distinguished in that

the work was started by Carrier's forces and **while** unfinished transferred to outside forces for completion. In Award #2 of Public Law Board No. 747, which involved almost identical circumstances to those herein, it was said:

"The Board finds that the Carrier did not engage in any contracting out work as that concept is contemplated within the meaning of the Scope Rule. The Carrier did not initiate, execute or control any of the work performed. It did not need the project and did not derive any primary benefit therefrom. The benefits received were ancillary and indirect and not solicited.

The evidence is clear that the public light and power company wanted and needed to construct a new power line to better and more effectively serve the community. **The** Carrier had no need to replace its existing signal and **communication** wire system. It was necessary for the Utility Company to replace these in order to effectuate its own project. The Carrier permitted them to enter its property to carry out its project without entailing any costs or responsibility **therefore.....Under** these circumstances, the Board finds it would be a gross misconstruction of the established principles and rules pertaining to contracting out to hold that the instant situation represented contracting out of work in violation of the scope rule....."

We concur in the reasoning cited above. Since the work involved herein was not for the benefit of Carrier, not at its expense and not under its direction or control, it did not violate the terms of the Scope Rule of the Agreement. In addition it is well settled that work may be contracted out when special skills, equipment or materials are needed, which are not possessed by Carrier (See Awards 5563, 11208, 13273, 18046, 18931 and many others). For the reasons indicated above the Claim must be denied.

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;

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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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By **Order** of Third Division

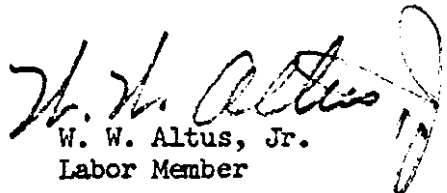
ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.

Dissent to Award No. 20156, Docket No. SG-19911

Award No. 20156 is no better than the precedent upon which it relies. The Majority has cited Award No. 18931 and others; In our Dissent to Award No. 16931 we called attention to certain errors of interpretation there committed; our Dissent there is equally applicable here.

Award No. 20156 is in error and dissent is registered.


W. W. Altus, Jr.
Labor Member