

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20280
Docket Number SG-19993

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad **Company** that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, seniority, promotion, hours of service, bulletining, and assignment rules, when, beginning on or about April 22, 1971, it arranged for or otherwise permitted the Henkels and McCoy Construction Company **employees** to install 19, 29, **37-conduc-**
tor underground cable for signal circuits from approximately Mile Post 1, Grey's Ferry Tunnel in Philadelphia, Pa., to a point approximately sixteen miles of there.

(b) Carrier should now be required to compensate all **employees** listed below, and all other **employees** who entered these gangs after April 22, 1971, while the Henkels and McCoy Construction Company is working on the installation of this cable, at their respective overtime rates of pay for all man hours worked by the Henkels and McCoy Construction **Com-**
pany employees on the installation of this cable, on a proportionate basis, beginning April 22, 1971, and continuing so long as these outside **employees** perform this work; this to be in addition to any other **com-**
pensation paid to these **men** for the claim period.

Signal Gang RG Tower, Philadelphia, Pa. Force No. 1611

Kermit DeBoard	Foreman	ID No. 1105632
Thomas Disque	Signal Maintainer	ID No. 1506812
Ralph Gamble, Jr.	Signal Maintainer	ID No. 1506940
Don Sutphin	Signal Helper	ID No. 1506813
Nelly Bishop	Signal Helper	ID No. 1508403
William Winkleman	Signal Helper	ID No. 1509127

Signal Gang, Newark, Delaware Force No. 1614

Glen Hinsdale	Leader Signal Mtr.	ID No. 1105980
Victor Sitgile	Signal Maintainer	ID No. 1105981
G. W. Pounds	Signal Maintainer	ID No. 1105966
G. C. Morrison	Assistant Signalman	ID No. 1105626
Frank Renai	Signal Helper	ID No. 1505236

/Carrier's File: 2-SG-497

OPINION OF BOARD: On February 26, 1971 the Organization was informed that underground cable for signal circuits was to be installed along Carrier's right-of-way from Grey's Ferry Tunnel in Philadelphia, Pa. to a point about sixteen **miles** west of there. This project was occasioned by a power shortage in Philadelphia; as a result the Philadelphia Electric Company determined that it would be desirable to build a 220 **KV** line along and above the Carrier's right-of-way as described above. Carrier agreed to permit the construction, with caveats as follows. The high voltage line projected presented an **immediate** danger to the signal and **communication** facilities along the 16 mile stretch; to correct this problem such facilities had to be modified by being removed from the pole lines and buried in special cable underground or removed entirely. Further it was necessary to rewire the signal houses and make connections with the projected underground cable. As part of the arrangement the underground cable was subsequently installed by the Henkels and McCoy Construction Company under contract let by the Philadelphia Electric Power Company. This new cable did not become the property of the Carrier, nor was it under Carrier's control until the work had been completed. Carrier used its signal **employees** to perform the work required in rewiring the signal houses and making the connections to the underground cable.

The Organization claims that the work of installing the underground cable was recognized signal work, was work which had been performed for many years by **employees** of the Carrier covered by the Signalmen's Agreement, and should not have been contracted out. Petitioner cites the Scope Rule as controlling, and specifically the last paragraph which states: "No employees other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein..." Since no emergency existed, Petitioner argues that Carrier violated the Agreement in contracting out the work.

Carrier's principal argument is that the work in question was not covered by the Agreement. Carrier asserts that it had no need to replace its signal **wires** and the only reason for the project was the interference which the Power Company's installation **would** create. The work complained of was not a part of any program designed to improve Carrier's signal or **communication** system but was performed solely for the benefit of the Power Company so that it could install its 220 **KV** power line. The Carrier avers that the responsibility for installing the new buried cable was solely with the Power Company who paid for all the work; Carrier had no interest or control over the project until it was accepted. Carrier concludes that since the Scope Rule is applicable only to work described which is under Carrier's control, and is for its benefit, the rule was not violated.

In Award 19718 and a series of prior Awards, this Board has taken the position that Claims in related disputes did not have merit **when** the evidence did not establish that the disputed work was within Carrier's control and hence within the scope of the Agreement. In closely related disputes we have recently dealt with the **same** issue as that herein, in Award 20156 and also it was **reviewed** extensively in Award No. 2 of Public Law Board 747. In the latter Award 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...."

A number of other issues were raised in this dispute which we deem require no **comment** in view of our findings on the principle issue. Although Petitioner alludes to the possible deception practiced by Carrier in this dispute, no evidence was presented to support the hypothesis. The facts seem **clear** and unequivocal; the work was contracted out by the Power Company, not the Carrier, and for the benefit directly of the **Power** Company, not the Carrier. Under those circumstances, there cannot be a violation of the Scope Rule in the contracting and 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;

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;

Award Number 20280
Docket Number SG-19993

Page 4

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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.