NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20336
THIRD DIVISION Docket Number SG-19987

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Atchison, Topeka and Santa Fe Railway
(company - coast Lines -

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Company violated the current Signalmen's Agreement, as amended, particularly the Scope when it arranged for and/or otherwise permitted the Granite Stoldte Construction Company employes to construct dirt fills for the locating of signal equipment apparatus between M. P. 1121.5 and 1122.5, on October 6 and 7, 1970.

(b) Signalman W. Messer, assigned to L. R. Thomson's Signal Gang, Valley Division, be paid sixteen (16) hours at his pro rata rate for time spent by the above named outside contractor building signal location dirt fills. /Carrier's File: 132-57-27/

OPINION OF BOARD: Petioner claims that the Carrier violated the Agreement when on October 6 and 7, 1970 an outside contractor, Granite Stoldte Construction Company, constructed dirt fills upon which signal equipment was to be placed, over an area of about a mile. The Organization contends that the work of building dirt fills for signal equipment is covered by the Scope Rule of the Agreement, which reads as follows:

SCOPE

"This Agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, traffic control systems (TCS), automatic highway crossing protective devices, including all their appurtenances and appliances: also electrically controlled car retarder devices, train order signals, electric signal and switch lamps, switch heaters connected to or through signal system, hot bon, high water, dragging equipment and slide detectors connected to or through signal systems; static protection installations, wayside automatic train stop (ATS), or perform any other work generally recognized as signal work performed in the field or signal shops."

The Organization states that the Scope Rule above clearly and unequivocally covers the construction and installation of Signal equipment and all their appurtenances - the last phrase covering construction of dirt fills. The Organization also refers to the phrase "other work generally recognized as signal work" as being relevant to this claim. The only evidentiary material submitted by Petitioner was in conjunction with the rebuttal statement submitted to this Board, and, as the parties know full well, was not considered on the property and hence will not be given credence in our consideration.

Since the Scope Rule herein is a general rule, without all the specific components of the work spelled out, we must go to the conduct of the parties to determine whether or not the covered employes have exclusive rights to the work. Carrier asserted that there were many instances in which similar dirt fills were built by either outside contractors or other crafts and cited seven specific instances over a twelve year period, and after which there was no protest or claim from the Signalmen's Organization. Petitioner, while not denying the instances cited by Carrier, insisted that:

> "Building the dirt fills for the placement of signal equipment has historically been the work of signal employees covered under Article I of the Signalmen's Agreement and is work covered by the Scope Rule of the Signalmen's Agreement."

Although Petitioner has alleged the existance of a historic practice reserving the work in question exclusively to Signalmen, no evidence whatever in support of this allegation was presented. In Award 17061, involving the same parties and agreement, but different work contracted out, we said:

> "Therefore, inasmuch as the Scope Rule is void of specific language clearly showing an intent to assign the work in question exclusively to Signal Department employes, and having failed to prove by custom, tradition and past practice that such specific work has been exclusively reserved and performed systemwide by Signal Department employes, we must deny this claim."

Similarly in the case before us, the conduct of the parties does not support the hypothesis that the work is either an "appurtenance or appliance" as those terms are used in the Scope Rule, or is "generally recognized as Signal Work." No logical inclusion of such work as part of the installation of signal equipment or their appurtenances has been established. Based on the reasoning above and precedents of this Board, we must deny the claim herein.

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 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: E. W. Paulos
Executive Secretary

Dated at Chicago, Illiaois, this 31st day of July, 1974.