

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20529**
Docket Number SG-20335

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Illinois Central Gulf Railroad- Former
(Gulf, Mobile and Ohio Railroad

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

(a) Carrier has violated and continues to violate the Signalmen's Agreement, particularly the Scope, when it contracted to, or otherwise permitted **Commonwealth** Edison Company or persons not covered thereby to install underground cable for signal circuit use between **Lambert** and **Summit**, Illinois--a distance of approximately eight (8) miles.

(b) Carrier should pay to the assignees of the positions advertised in Northern Region Bulletin No. V-494 additional time equal to the number of man-hours of work performed by persons not covered by the Signalmen's Agreement on the **complained-of** project, on a prorated basis at their respective overtime rates.

(c) Carrier should, in event the claim is sustained, check its records jointly and in cooperation with Representatives of this Brotherhood to determine the number of man-hours worked by or paid to **Commonwealth** Edison Company **employees** or persons not covered by the Signalmen's Agreement, **in** aiding to determine **the** amount of **compensation** due **Claimant's**. **/Carrier's** File: E-45-3-91

OPINION OF BOARD: In 1971 The **Commonwealth** Edison Company, a public service utility company, in expanding its service constructed a new high voltage transmission line between certain points in Illinois. In this respect the power company desired to erect a segment of the high voltage line on eight miles of Carrier's right of way, parallel to its tracks, between **Summit** and **Lambert, Illinois**. It was recognized that the new high voltage line would seriously interfere with Carrier's adjacent pole line signal circuits. Carrier agreed to the power company high voltage line on the condition that **Commonwealth** replace the pole line with inductively shielded cable buried along the right of way. Subsequently, the underground cable

was installed to Carrier's specifications by Commonwealth Edison and its contractor at **Commonwealth's** cost; all signal connections were made by signal department employees covered by the Agreement herein. It is noted that the old signal circuits **were** placed on the pole line of Western Union Company in this area by virtue of an agreement entered into in 1909.

The Organization contends that Carrier violated the Scope Rule of the Agreement when it contracted **or** otherwise permitted persons not covered by the Agreement to install the underground cable replacing the existing pole line circuits. To support this position Petitioner argues: the Scope Rule reserves the exclusive right to install signal system lines and wires to its signal employees; Carrier's signal employees have historically and traditionally installed, maintained and repaired the entire Western Union pole line; the pole line in question is either owned by Carrier or Carrier has complete control of its maintenance and repair; the new cable was installed for the benefit of Carrier and is not owned by Commonwealth Edison as alleged by Carrier; Claimants were deprived of work by virtue of the employment of outside forces.

Carrier, in denying the Claims made by Petitioner asserts that this is the only underground cable installation on its property and hence there is no "history and tradition" with respect to this work: there is no evidence or rule support for the proposition that the work in question is reserved to its signal employees. Carrier also states that the new cable is owned by the Utility Company, but presented no evidence in support of this assertion. Carrier argues that it did not contract out any work but gave permission for the undertaking to the **Commonwealth** Edison Company for the sole benefit of that **Company** - not the Carrier. Carrier also contends that Claimants **were** fully employed during the period of the claim and suffered no loss in any event.

It is well established by this Board that work which is not for the benefit of the Carrier, and not within its control, may be contracted out without violation of the Scope Rule (see for example Awards 14888, 15906, 19369, 19500 and 19718). Petitioner cites the Award of Public Law Board No. 387 involving the Long Island Railroad in support of its position. In that Award however, the work of the installation **of a** new cable was started by employees of Carrier and completed by employees of the Utility company; furthermore that Board found this to be merely a "technical" violation of the scope rule and awarded no monetary payments to claimants. There have been three awards covering virtually identical circumstances as those herein: Awards No. 2 of Public Law Board 747 and 20156 and 20280. In the three Awards indicated, all with this Organization and other Carriers,

it was held that the work was not for the benefit of Carrier, not at its expense, not under its direction or control and therefore did not violate the provisions of the respective scope rules. The reasoning in those Awards is not in palpable error and we shall follow and concur in those opinions.

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 W A R D

Claim denied.

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

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this **22nd** **day of** November 1974.