NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20899

THIRD DIVISION Docket Number Se-20786

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Railway Company

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

Claim No. 1:

T. A. Clark, Mr. L. R. Johnson, Mr. D. B. Strickland, on behalf of Messrs. D. A. Whitten, Mr. H. G. Fowler, J. W. White and C. G. Inman for additional pay as Foreman, Leading Signalman and Signalmen account Carrier used and using outside contractor, Southeastern Railroad Materials Company, to install signal equipment and power switches and electric locks on connecting tracks and interlockings in connection with new retarder yard at Sheffield, Alabama. /Carrier file No. SG-40193/

Claim No. 2:

Mafhtainer, Haleyville, Alabama on behalf of Messrs. B. F. Robinson, Signal Maintainer, Jasper, Alabama, and J. L. Potate Signalman, Annistonm Alabama, for work that was performed by outside contractors on Alabama Division M.P. 5 NA and 8.9 NA:

Claim for Mr. B. F. Robinson for pay as Signal Foreman, based on 212 and 1/3 hours per month in addition to any pay already received or owed him.

Claim for Mr. F. K. Robinson for pay as Leading Signalman at present overtime rate, this pay to be in addition to any pay already received or owed him. The amount of time to be no less than 40 hours per week during time of violation.

Claim for Mr. J. L. Potate for signalman pay at present overtime rate and to be no less than 40 hours er week during time agreement was violated. /Carrier file No. SG-41220/

OPINION OF BOARD: The gravamen of this dispute is based on Petitioner's contention that Carrier violated the controlling Signalmen's Agreement, specifically Article I, Scope Rule 1, when it contracted out the performance of signal work on the approaches to its new Retarder Yard at Sheffield, Alabama.

Actually, as indicated in the Statement of Claim, two separate claims are presented since two separate seniority districts are involved; each claim having been handled separately on the property. However, as stated in Petitioner's submission on its appeal, these claims are combined because the same issue applies to both claims and both involve the same claimed violation of Scope Rule 1.

Petitioner contends that the disputed signal work was theirs to perform, based on the specific language of the Scope Rule and based on past practice. Conversely, Carrier argues that the fourth paragraph of Scope Rule 1 expressly provides for the contracting of larger installations in connection with new work. Petitioner replies that such contracting only applied to signal work inside the Retarder Yard, and that in the past Carrier's signal employes performed all signal work outside the yards. Thus, are the issues joined before this Board.

In essence, the first three paragraphs of Scope Rule 1 are not here in dispute, and resolution of the instant issues hinges upon applicability to the confronting facts of the fourth paragraph of the Scope Rule, which is broken down into its component parts, for emphasis, as follows:

1. "It having been the past practice, this Scope Rule shall not prohibit the contracting of larger installations in connection with new work . . ."

2. "nor the contracting of smaller installations if required under provisions of State or Federal law or regulations, . . . "

3. "and in the event of such contract this Scope Rule is not applicable."

4. "It is not the intent by this provision to permit the contracting of small jobs of construction done by the Carrier for its own account."

Dealing first with part "2" above, there is nothing in the record to indicate that any "provisions of State or Federal law" are involved. Accordingly, part "2" has no relevancy to this dispute. As to part "4", if a "small job of construction" is here involved, then clearly this portion of the Scope Rule quoted above would apply. This issue remains for determination based on our analysis of the precise nature of the construction here involved.

Carrier contends that part "1" quoted above is precisely applicable to the disputed work and that the involved construction constituted a "larger installation in connection with new work" which it was thereby permitted to "contract out". If this be so, then part "3" is clearly in effect and "this Scope Rule is not applicable."

The specific construction work which Carrier contracted out was for the complete installation of signals, power switches, retarder and remote control equipment, electric locks, interlocking and all related equipment required in connection with the construction and placing into operation of its New Retarder Yard at Sheffield, Alabama.

The clear impact and complex and extensive nature of the described construction work evidences conclusively that it was a "larger installation in connection with new work". Obviously, therefore, part "4" quoted above is inapplicable since it relates to a "small job of construction". Petitioner does not dispute this conclusion, but maintains that, based on past practice, all signal work outside the yards was theirs to perform. In effect, therefore, it is Petitioner's position that the disputed work should have been fragmented from the whole and assigned to Claimants,

These same issues, the same fourth paragraph of the Scope Rule, the same parties, and similar factual situations, were involved in four prior disputes before this Board. In each case, the Award was adverse to the position of Petitioner and in each case the claims were denied.

Thus, in Award 15498 (Rouse) and 15499 (House) we held "that the fourth paragraph of the Scope Rule relieved Carrier of its obligation to assign the involved work to its Brotherhood employes. . . ". In Award 16337 (Friedman) we construed such construction as "a larger installation in connection with new work" within the meaning of the Scope Rule and Carrier was therefore permitted to utilize contractors on i. The same conclusion was reached in Award 1.6523 (Devine) and the disputed work was therefore held "subject to being contracted out under the clear provisions of the Scope Rule."

Accordingly, we deem the foregoing Awards controlling upon the instant dispute. We conclude, therefore, that the subject construction constituted "a larger installation in connection with new work" which fell clearly and unambiguously within the permitted "contracting out" option afforded to Carrier as spelled out in the fourth paragraph of the Scope Rule quoted above.

Additionally, two other issues raised by Petitioner merit consideration. Firstly, as to Petitioner's contention of "past practice" (which is sharply disputed by Carrier), we have held in numerous prior Awards that Rules similar to the above quoted Scope Rule, being clear and

unambiguous in nature, may be invoked by Carrier at any time notwithstanding any alleged prior practice to the contrary. See Awards 14599 (Ives), 19552 (Edgett) and 20711 (Eischen), among others. We so hold here.

In the latter context, the fact that Carrier's signal employes may have been used in the past to perform work, in whole or in part, in connection with a major installation, does not prejudice Carrier's right under the specific provisions of the Scope Rule to contract out similar installations in the future.

Secondly, we find no evidence in the record that the disputed work could in fact have reasonably been segregated from the whole construction project and assigned to Claimants; nor is there any Rule in the Agreement requiring Carrier to make such fragmentation of the work.

See Awards 4776 (Stone), 4954 (Carter), 5304 (Wyckoff) and 9335 (Weston),

Similarly, the Second Division under analogous circumstances' has denied similar claims. See 2nd Div. Awards 2186, 2377, 2488, 3278, 3433, 3461, 3559 and 4091.

Accordingly, based on the record evidence and controlling authority, we will deny Claim No. 1 and Claim No. 2.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Doted at Chicago, Illinois, this 12th day of December 1975.