

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21867**
Docket Number **SG-21680**

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Signal Foreman **W. H. Pankey** (\$1233.48 per month) and Signalman **G. Brown** (\$5.74 per hour), members of Signal Gang 11065, St. Louis, Missouri, for 64 hours each at time and one-half their respective straight time hourly rates, account the Carrier, about the week of October 30, 1974, engaged the services of an outside contractor to dig approximately 149 holes for a signal pole line change, between North Chester, Illinois, and the south end of **Reily** Lake, Illinois, in violation of the Scope Rule dated September 1, 1968, included in the Scope Rule of the current Agreement dated May 1, 1964.

Carrier's file: K 225-6687

OPINION OF BOARD: The claim is that Carrier should not have contracted out the relocation of some four miles of signal lines, requiring the setting of approximately 149 poles. Some 130 new poles were used **while** 19 were salvaged from their previous location. The Carrier's decision to contract was based on engineering forecast that the new location would require a power auger and perhaps blasting, neither of which were within the capability of the signal gang. As it turned out, the signal crew could probably have handled the job.

"SCOPE

"This Agreement governs the rates of pay, hours of service and working conditions as specified **herein of employes** in the Signal Department classified in Article I of this Agreement performing signal work in the construction, installation, maintenance, repair, inspection and testing of signals and signal **systems**, interlocking plants, highway crossing protection devices and their appurtenances, centralized traffic control systems, hot box protection devices; slide and flood protection devices connected to signal system, electric switch lamps (except removal and replacement **of** bulbs and lenses), car retarder systems, and all other work generally recognized as **signal** work pursuant to the Standards and Practices adopted by the Signal Department, either in Signal Shops or in the field."

The above is clarified by a September 1, 1968, agreement:

"Construction and maintenance of **communications** pole lines, wires and appurtenances.

"NOTE: The word 'construction' used in the foregoing sentence does not deprive the Carrier of the right to have other than Carrier forces perform the work required in the rehabilitation, upgrading and dismantling of existing **communications** pole lines, wires and appurtenances, nor 'does it prohibit the contracting of major new **communication** pole line construction, with the understanding such action will not result in contracting out the signal wires and power lines and appurtenances or the furloughing of **employees** subject to the Agreement between the parties hereto."

The issue, therefore, is whether this was construction **reserved** to the signalmen, or was major new work which could be contracted out. The project was required to make room for a new main track. It consisted of **moving** the signal lines from the river side to the bluff side of the tracks.

A scope agreement, not identical but similar to the above, **appears** in Award 16337 (Friedman) where "larger installations in connection with new work" could be contracted. **We** quote from that award:

"But a fence which replaces an existing fence, and is made of new materials, although on the very site of the old one, is a new fence - even if some of the old fence posts are retained. Similarly, a house built upon the foundation of its burned-out predecessor is a new house, even if some of the plumbing is retained and its function, design **and** appearance are duplicated. Practically and logically, a new house has been built. At **some** point it may be difficult to distinguish where repair or minor modification leaves off and new construction begins, but that is no problem in dealing either with a replacement fence or house or the **CTC** system on this property."

This approach was approved in Award 16523 (**Devine**) and is equally pertinent here.

Thus, we are constrained to find that the major new work exception applies.

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

The Agreement was not violated.

A W A R D

Claim denied.

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

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **January 1978**.