

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24718
Docket Number SG-24719Edward L. **Suntrup**, 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:

(a) Carrier violated the Communication **Employees** Agreements, particularly the Scope Rule of the Memorandum Agreement effective **February** (sic) 28, 1980 **on the** former Gulf District, when it permitted Electronic Technician Bobby Johnson employed by the former Texas and Pacific Railway Company, who holds no rights to any **work** on the former Gulf District in Communications and is not covered by any Agreements on that portion of the property, to perform Communication **Employees** work totaling (137) hours on the former Gulf District of the Missouri Pacific Railroad Company on the dates and territories as follows at the time and one-half rate:

Comm. Maintr. T. L. Smith

3-06-81	Phelps, Tx.	10 hours
3-10-81	Palestine, and Elkart, Tx.	10 hours
3-11-82	Crockett, Tx.	11 hours
3-12-81	Trinity, Tx.	4 hours
3-19-81	Trinity, Crockett and Phelps	12 hours
3-20-81	Palestine and Elkhart, Tx.	<u>12 hours</u>
	Total =	59 hours

Comm. Maintr. J. D. McKenzie

3-04-81	Spring, Tx.	4 hours
3-14-81	Spring, Tx. (Saturday)	10 hours
3-17-81	Spring, Tx.	<u>8 hours</u>
	Total =	22 hours

Comm. Maintr. R.D. Busch

3-05-81	Conroe, Tx.	12 hours
3-12-81	Conroe, Tx.	4 hours
3-13-81	New Waverly, Tx.	10 hours
3-16-81	Conroe, Tx.	12 hours
3-17-81	Conroe, Tx.	7 hours
3-18-81	Conroe and New Waverly, Tx.	<u>11 hours</u>
	Total =	56 hours

OPINION OF BOARD: This is a pay claim initiated by the Organization on April 27, 1981 on behalf of three (3) Communication Maintainers named in the Statement of Claim. **It** is the position of the Organization that the Carrier allegedly violated the Scope Rule of the Communication Employees Memorandum Agreement of February 28, 1980 on the former Gulf District when the Carrier assigned an Electronic Technician employed by the former Texas and Pacific Railway Company to perform Communication Maintainer work in that same Gulf District of the Missouri Pacific Railroad Company.

The narrow issue here at bar is whether the Carrier was contractually justified in using the services of an Electronic Technician employed by the former Texas and Pacific Railway Company. The contract here at bar includes a Scope clause and two (2) attached Notes, here quoted in pertinent part.

"SCOPE

All **employees** in the Communications Department of the former Gulf District engaged in the **construction, installation,** maintenance, repairs, inspection, dismantling and removal of telephone and telegraph transmission lines, and switching systems, and associated equipment, such as telephone, telegraph and teletype equipment, fixed and mobile radio used for railroad operational purposes, closed circuit television, interoffice communications systems, yard speaker systems, electronic weighing machines, and all work recognized as communications work; provided, however, this will not prevent others acting under the direction of a Communications Supervisor or District Officer from utilizing spare equipment limited to plug-in modular units requiring no specialized knowledge or skills to restore service in cases of emergency.

NOTE 1. Nothing above shall prohibit a Supervisor in the Communications Department from inspecting and testing communications equipment and circuits in the performance of his duties.

NOTE 2. Carrier retains the right to contract major installations of microwave and coaxial cable systems.'

The Carrier avers, without rebuttal by the Petitioner, that the work in question was the installation of a major *microwave system* as referred to in **NOTE 2** of the Scope rule, which permits the contracting of such work. The act of the Carrier here complained of was tantamount to contracting to the former Texas & Pacific the work in question; hence, the Board can find nothing in the evidence nor arguments presented by the moving party in this case to permit it to conclude that the Carrier was in contractual error, under Note 2 cited above, when it utilized the Electronic Technician from the **former** Texas and Pacific Railway Company to perform the work in question.

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:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 9th day of March, 1984