

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25011
Docket Number SG-24883

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

(a) CMStP&P Railroad violated the Signalmen's Agreement, dated July 1, 1979, as amended, particularly the Scope, when it allowed and/or permitted outside parties or persons not covered by that agreement, to perform signal work of installing highway crossing warning signals where Scott Boulevard, Iowa City, Iowa, crosses Chicago, Rock Island and Pacific Railroad Company tracks, commencing on or about September 11, 1981.

(b) Carrier should now be required to compensate Milwaukee Signal Maintainer Cecil McLaughlin, former Rock Island Signal Employee R. E. Hickerson and laid off Rock Island signal employees, G. Smith, B. M. Haggard, time equal to the man-hours of work outside parties or persons not covered by said agreement, performed in connection with the above-referred to signal work, as a consequence of the violation and/or the loss of work opportunity.

(c) Carrier should check with the State of Iowa, Department of Transportation and the City Engineer Iowa City and in cooperation with representatives of this Brotherhood to determine the number of man-hours worked by or paid to outside parties or persons, in aiding to determine the amount of compensation due Claimants."

OPINION OF BOARD: Pursuant to an Interstate Commerce Commission (ICC) Service Order, the Carrier became the interim Operator of specific trackage of the bankrupt Chicago, Rock Island and Pacific Railroad Company, (Rock Island) at Iowa City, Iowa. On or about September 11, 1981 installation of a crossing warning was commenced by a private contractor at the junction of Scott Boulevard and tracks formerly owned by Rock Island in Iowa City. The work was performed at the expense of Iowa City and was constructed in accordance with designs secured by the City from a signal supplier. Shortly after the work had begun, the Organization brought the matter to the attention of the Carrier, claiming that parties or persons not covered by their Agreement had been permitted to perform signal work. The Organization has submitted the instant claim on behalf of four (4) employees for compensation equal to the man-hours of outside work performed in connection with the signal work.

The first issue is whether the work performed by the contractor is covered by the Scope Rule which provides for certain work to be assigned exclusively to signal employees, which includes "*** highway crossing warning devices, *** including all their apparatus and appurtenances ***." This Board has specifically addressed this issue under similar circumstances in Third Division Award No. 23422 by stating the following:

**** Generally, we have adhered to the proposition that where the disputed work is not permitted at the Carrier's instigation, not under its control, not performed at its expense and not exclusively for its benefits, the work may be contracted out without a violation of the Scope rule. Third Division Awards No. 20644 (**Eischen**); No. 20280 (**Lieberman**); No. 20156 (**Lieberman**) and No. 19957 (**Hays**). "

In the instant case, the Carrier did not contract work that was performed within territory owned and previously operated by Rock Island. Apparently the work was performed as a result of a contract between the City of Iowa City and the contractor as part of an overall highway project.

At the time the work was performed, the Carrier was the interim Operator of Rock Island territory in accordance with an ICC Service Order which obligates the Carrier "to preserve the value of the lines *** and for performing maintenance to avoid undue deterioration of lines and associated facilities." Subject to this exception, the Carrier is not authorized to perform work within territory owned by another Carrier without its consent.

The Carrier did not have any control over the City's determination of the contractor to **perform** the work in question. There is nothing in the record to indicate that the Carrier either as principal or agent played any role in selecting the outside contractor. The contracting of the work was not instigated by the Carrier since there was no operating Agreement between the City and the Carrier which covered the work at Scott Boulevard. See Third Division Awards No. 23034 and No. 23036. Since the Carrier had no control over the City's actions, it was not evading any of its responsibilities under its Agreement with the **Organization**.

It may very well be true that the **Carrier** had knowledge before September 11, 1981 that the work at Scott Boulevard was to be performed by a contractor. However, the work involved did not constitute work under the control of the Carrier. Thus, it cannot be said that as an interim Operator of the specific territories owned and operated by Rock Island in accordance with the ICC Service Order, the Carrier acquiesced in permitting the work to be performed by the contractor.

The Organization alludes to the Miami Accords Agreement (also known as the March 4, 1980 **Employee** Protection Agreement) which prohibits the Carrier and other railroads from contracting work. The Miami Accords Agreement is not applicable to the instant case because the Carrier did not contract work that was performed within territory owned and previously operated by the Rock Island.

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:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.



Labor Member's
Dissent to Award No. 25011
Docket No. SG-24883

Finding error in Award No. 25001 is no difficulty; **the tone** of the whole, award **is** one of looking for excuses for the Carrier's conduct. Perhaps the most glaring fault is that stated in the penultimate paragraph which reads:

"It may very well be true that the Carrier had knowledge before September 11, 1981 that the work at Scott Boulevard was to be performed by a contractor. However, the work involved did not constitute work under the control of the Carrier. Thus, it cannot be said that as an interim Operator of the specific territories owned and operated by Rock Island in accordance with ICC Service Order, the Carrier acquiesced in permitting the work to be performed by the contractor."

It seems to this member that to so hold flies squarely into the face of that part of the directed service order which mandates that:

"(g) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government."
(**Emphasis** ours)

All operations in the territory in question during the period in question were those of the respondent. Had there been no operations, the facility in question would not have been needed.

The majority has erred: I dissent.

A handwritten signature in black ink, appearing to read "W. W. Altus, Jr.", with a stylized flourish at the end.

W. W. Altus, Jr.
Labor Member