

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26488

Docket Number SG-26107

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Norfolk & Western Railroad Company

STATEMENT OF CLAIM:

"Case No. I

Claim on behalf of G. A. Harshbarger for 200 hours at the punitive rate on October 20, 21, November 8, 9, 10, 15, 16, 17, 18, 22, 23, 24, 29, 30, December 1, 2, 9, 14, 15 and 16, 1982. Carrier File No. SG-FTW-82-18.

Case No. 2

Claim on behalf of D. L. Herr, Bill Dick, Gene Harshbarger, Gary Harshbarger, Finley Wells, Brian Shultz, Jim Wentzel, Kim Poole, Renee **Herrera**, Bill Straub, Tim Wallace and Robert Spencer for 140 hours each at the punitive rate on December 11, 12, 13 and 14, 1982 and January 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, 1983. Carrier File No. SG-FTW-82-3.

Case No. 3

Claim on behalf of D. L. Herr, Gene Harshbarger, Gary Harshbarger, Bill Dick, Finley Wells, Brian Shultz, Jim Wentzel, Kim Poole, Renee **Herrera**, Bill Straub, Tim Wallace and Robert Spencer for 168 hours each at the applicable straight time rate on October 30, 31, November 1, 2, 9, 10, 11, 12, 13, 14, 16, 23, 24, 25, 26, 27, 28, 29, 30, December 7, 8, 9, and 10, 1982. Carrier File No. SG-FTW-82-21.

Case No. 4

Claim on behalf of M. C. Blackman, B. R. Hicks and M. W. **Sarver** for 5 hours each at the punitive rate on December 15, 1982. Carrier File No. **SG-STL-83-3**.

Case No. 5

Claim on behalf on D. L. Herr, Bill Dick, Gene Harshbarger, Gary Harshbarger, Finley Wells, Brian Shultz. Jim Wentzel, Kim Poole, Renee **Herrera**, Bill Straub, Tim Wallace and Robert Spencer for 80 hours each at the punitive rate on January 16, 17, 18, 19, 20, 21 and 31, 1983. Carrier File No. SG-FTW-83-6.

Case No. 6

Claim on behalf of D. L. Herr, Bill Dick, Gene Harshbarger, Gary Harshbarger, Finley Wells, Brian Shultz, Jim Wentzel, Kim Poole, Renee Herrera, Bill Straub, Tim Wallace and Robert Spencer for 150 hours each at the punitive rate on February 1, **2, 3, 4, 7, 8, 9, 10, 11, 17, 18, 19, 20, 23 and** March 2, 1983. Carrier File No. SG-FTW-83-8.

Case No. 7

Claim on behalf of G. M. Harshbarger and Robert Spencer for 24 hours each at the punitive rate on March 29, **30, and 31**, 1983. Carrier File No. SG-FTW-83-9.

Case No. 8

Claim on behalf of G. M. Harshbarger, G. A. Harshbarger and Robert Spencer for 72 hours each at the punitive rate on May **3, 4, 5, 9**, 10, 11, 18, and 26, 1983. Carrier File No. SG-FTW-83-11.

OPINION OF BOARD: The eight Claims in this dispute arose out of signal work performed in 1982 between Muncie and Fort Wayne, Indiana. According to the Carrier's material the work involved a completely new installation of a Centralized Traffic Control system (**CTC**) as well as upgrading and changing existing signal apparatus. All new installation work was allocated to an outside contractor and all changes and upgrading was performed by Carrier's signal employees.

The **employees** involved in Claims 1 to 3 and 5 through 8 were covered by a Memorandum of Agreement dated March 10, 1952, between the New York, Chicago and St. Louis Railroad Company and the Organization which provided as follows:

"MEMORANDUM OF AGREEMENT

between

THE NEW YORK, CHICAGO AND ST. LOUIS

RAILROAD COMPANY

and its

SIGNAL DEPARTMENT EMPLOYEES

represented by

THE BROTHERHOOD OF RAILROAD

SIGNALMEN OF AMERICA

"It is hereby agreed between the parties hereto that Rule 1--Scope, of the agreement effective March 1, 1952, shall not prohibit the contracting with outside parties for the first installation of any interlocking plant; for the first installation of complete renewal of any automatic signal system, centralized traffic control system, or car retarder system; or for complete renewals or installations (except for highway crossing protection) required by State or Federal law or regulations thereunder; provided that at the time of such contracting there are not a sufficient number of properly qualified furloughed **employees** electing to perform such work.

ACCEPTED FOR:

The New York, Chicago and St. Louis Railroad Company
F. S. Hales
Vice President

ACCEPTED FOR:

The Signal Department **Employees** represented by the
Brotherhood of Railroad Signalmen of America
E. H. John
General Chairman

APPROVED:

S. H. Howard
Grand Lodge Representative
Cleveland, Ohio

March 10, 1952."

The Claimants in Claim No. 4 were covered by the N & W Agreement. That Agreement, while containing an identical Scope Rule to that in the NKP Agreement, did not contain the special provisions relating to contracting out work contained in the Memorandum of 1952 (quoted **supra**).

With respect to the Claims coming under the **NKP** Agreement, Petitioner argues that the work in question was not a new **installaton** of a CTC system and therefore the work belonged to Claimants. Also, the Organization maintains that in Claim No. 4, coming under the N 6 W Agreement, there was no provision permitting the contracting out of work and there was clearly a violation of the Agreement.

Carrier **asserts** that all the work accomplished by its contractor was fully in compliance with the Memorandum Agreement dated March 10, 1952. Carrier states that in this instance there was both a first installation of a CTC system as well as a complete renewal. Furthermore, the language relied on is

clear and unambiguous. Carrier insists that its forces performed all work relating to existing **equipment** and the contractor performed all work with respect to the new installation.

The dispute herein, in large part, is based on factual allegations. The work must be categorized as either constituting a new installation (or a complete renewal) or not. Carrier has submitted material to support its position that it was indeed largely a new installation. Petitioner has merely made assertions to the contrary, but has submitted no evidence to support those assertions. Thus, Claims 1 to 3 and 5 to 8 must fail.

With respect to Claim No. 4 it must first be observed that Carrier has not mounted a cogent defense of its denial of that Claim. Further, the Board notes that the N&W Agreement contains no contracting out provisions and it is apparent that the use of a contractor's forces to perform work reserved to Claimants is a violation of the Agreement. Since the violation encompassed loss of work opportunity for Claimants they will be compensated at straight time rates, rather than at the punitive rate.

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 violated in Claim No. 4.

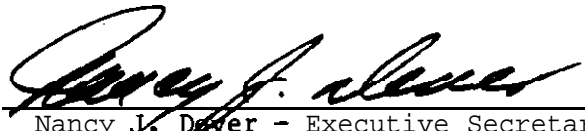
That the Agreement was not violated in Claim Nos. 1, 2, 3, 5, 6, 7 and 8.

A W A R D

1. Claims 1, 2, 3, 5, 6, 7 and 8 denied.
2. Claim 4 sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 9th day of September 1987.