

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of R. A. Reynolds for six hours pay each day for 10 days, from September 4 through 16, 1986, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule and Rule 2-A-1, (a), (b), (c) and (d), when it used outside agreement personnel to work with gangs installing fiber-optics between Wooster and Mansfield." Carrier file CR-2395.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The record indicates that this dispute involved signal work in conjunction with fiber-optic gangs in the area from Wooster Mass, to Mansfield, Ohio during the period beginning September 2, 1986, and continuing until September 16, 1986. The work of the three men brought in to supplement the gang encompassed 14 hours per day for the ten days in dispute (eight hours at straight time plus travel and overtime.)

The Organization maintained that Carrier violated the Scope Rule when it permitted employees who were not covered by the Agreement to perform Scope Rule work. Further, according to the Organization, Claimant was not permitted to bid on the work under the provisions of Rule 2-A-1 and 2-A-3.

Carrier, throughout the handling of the dispute on the property, claimed that:

"The fibre optic gang in question was temporary and, therefore, not subject to advertisement. Records disclose that the gang only worked 25 calendar days. Claimant held a permanent position, he was not reduced in class nor was he furloughed, therefore, Rule 2-A-3 was not applicable to him as those conditions did not apply in his case."

Carrier never took the position that there was no Scope Rule violation in this dispute; hence it must be assumed that Carrier acquiesced to that allegation. Based solely on the handling of this matter on the property, we find that the Organization made a prima facie case which was not refuted by Carrier.

With respect to the remedy, the Organization claims 60 hours pay at the punitive rate, but based upon the record before us, we find that Claimant is entitled to forty (40) hours compensation, but only at straight time rates for work not performed (he suffered no loss of pay).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.