Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD THIRD DIVISION

Award No. 28739
Docket No. SG-27069
91-3-86-3-122

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

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

Case No. 1

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Sept. 10 - Oct. 6, (between these dates), 1984 at Macksville, Ind., Mile Post 75.3, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 1-85 Carrier File SD-2192.

Case No. 2

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about between Sept. 10 and Oct. 6, 1984 at East Farrington, Mile Post 80.6, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 2-85 Carrier File SD-2193.

Case No. 3

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about between Sept. 10 and Oct. 6, 1984 at East Marshall, Mile Post 89.7, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 3-85 Carrier File SD-2194.

Case No. 4

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about between Sept. 10 and Oct. 6, 1984 at Greenup, Ill. (E. Up), Mile Post 117.7, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 4-85. Carrier File SD-2195.

Case No. 5

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about between Sept. 10 and Oct. 6, 1984 at Montrose, Ill., Mile Post 131.1, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 5-85 Carrier File SD-2196.

Case No. 6

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about between Sept. 10 and Oct. 6, 1984 at Effingham, Ill., Mile Post 140.6, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 6-85. Carrier File SD-2197.

Case No. 7

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Nov. 10, 1984 at St. Elmo, Ill., Mile Post 157.8, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 7-85. Carrier File SD-2198.

Case No. 8

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Nov. 12, 1984 at Funkhouser, Ill., Mile Post 144.9, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS-8-85. Carrier File SD-2199.

Case No. 9

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Nov. 16, 1984 at High, Ill., Mile Post 210.4, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 9-85. Carrier File SD-2200.

Case No. 10

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Dec. 17, 1984 at W. Up, Mile Post 117.7, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 10-85 Carrier File SD-2201.

Case No. 11

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Dec. 18, 1984 at Terre Haute, Ind., Mile Post 68.8, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS-11-85. Carrier File SD-2202.

Case No. 12

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Dec. 20, 1984 at W. Aden, Mile Post 99.7, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS-12-85 Carrier File SD-2203.

Case No. 13

Claim on behalf of C. R. Paden, J. L. Hollingsworth, B. K. Cushman and D. W. Fitt:

(a) That on or about Jan. 11, 1985 at West Farrington, Ill., Mile Post 81.7, the Company arbitrarily, capriciously and blatantly violated the Scope and Classification Rules and also the preservation paragraph of the Scope Rule of the CRC/BRS Agreement effective Sept. 1, 1981 when it allowed employees from an outside contractor (SAB) to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Seniority District 21. This violation occurred on former Pennsylvania Railroad property.

(b) That Claimants be paid a similar number of hours that these other than those employees represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety-six (96) hours or twenty-four (24) hours each Claimant, to be paid at the respective time and one half rate, because of these capricious, arbitrary and blatant violations. General Chairman File BRS 13-85. Carrier File SD 2204.

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 employes involved in this dispute are respectively carrier and employes 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.

This Claim arises from work performed by an outside Contractor for the construction of a Microwave Communications System in Spring of 1984.

As a result of these events, the Organization filed the instant Claim. It contended that the construction of the Microwave System should have been performed by its forces. Carrier timely denied the Claim. Thereafter, it was handled in the usual manner on the property. The IBEW participated as Third Party. It is now before this Board for adjudication.

The Organization maintains that Carrier violated the Scope Rule of the Agreement under the facts of this case. That Rule reads:

"SCOPE

These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented here by the Brotherhood of Railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work:

Interlocking systems
Block signal systems
Car retarder systems
Remote control of switch and signal systems
Wayside train signals
Train order or train start signals
Cab signal, train control or train stop systems other than that portion on moving equipment
Signal locking and detection systems on movable bridges (except power wedges)
Spring switches

Weigh-in-motion scale systems
Highway-railroad grade crossing protection systems (other than those manually operated)
Dragging equipment detector systems
High or wide load detector systems
Slide detector systems
Flood detector systems
Broken flange detector systems
Broken wheel detector systems
Hot box detector systems
Presence or motion detectors
Printed circuit boards
Switch heaters
Electric lighted switch lamps
Pipelines and pipeline connections used for mechanical operation or locking of derails, switches and signals
Signal batteries
Signal pole lines
Impedance bonds, signal bonds and track connection leads
Relay houses and relay cases
Compressed air plants and compressed air distributing systems installed wholly or primarily for railroad interlocking, signaling or retarder systems
Carpentry, painting, welding, cutting, foundation support, concrete work, digging and backfilling trenches in connection with installing, repairing or maintaining any signal apparatus or device
Operation of all machine tools, back hoes, trenchers, hoisting equipment, hole diggers, pipe pushers or other equipment used in construction, installation, maintenance or repair of signal systems. (In instances where equipment has been rented with an operator, an employee in the mechanic (or higher) class will be assigned to work with the operator of each piece of rental equipment.)
Removal of brush or trees that impair the operation of the signal system
Manning of trouble desk positions*

The following items of work on the former railroad indicated will continue to be performed by employees represented by the Brotherhood of Railroad Signalmen:

"Pennsylvania Railroad, Pennsylvania Reading Seashore Lines and Dayton Union Railway Company

Installation and maintenance of all telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment).

Installation, maintenance and repair, and testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply, (when such compressors, sets or power supply are used wholly or primarily for 'telegraph and telephone devices, apparatus or lines, and are individually housed in signal or telegraph and telephone facilities) which are part of the telegraph and telephone systems, to the extent that such work is now being performed by employees of the Communication and Signal Department.

New Haven Railroad

Installation, maintenance and repair of signal sub-stations, except Cos Cob Power Plant, and the signal power facilities at New Rochelle Junction and Water Street, New Haven (U.I. Company supply).

Pennsylvania Railroad

Maintenance and repair of the substation and line for 6600 volt power system at Richmond, Indiana;

Operation of movable bridges at Chicago;

Pennsylvania Reading Seashore Lines

Installation and maintenance of electrical wiring in stations and buildings;

Reading Railroad

Work on 4400 volt signal line on other than catenary structures in accordance with the tri-party agreement dated December 3, 1963; (See Appendix 'C').

Erie Railroad

Electrical work as described in the Memorandum of Understanding dated March 21, 1950; (See Appendix 'D')

Operation of movable bridge at HX (Hackensack River)."

It is understood and agreed in the application of this Scope that any work specified herein which is being performed on the property of any former component railroad by employees other than those represented by the Brotherhood of Railroad Signalmen may continue to be performed by such other employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not included within this Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement.

"EXCEPTIONS

(a) Work performed by outside companies incident to warranty, provided a qualified employee covered by this agreement accompanies the outside contractor.

(b) Removal of equipment from wholly abandoned railroad or pole lines.

(c) The portion of this Scope covering telegraph and telephone work shall not apply to the work of installing or maintaining other than company owned facilities or equipment located on the property of the former Pennsylvania Railroad, Pennsylvania Reading Seashore Lines or Dayton Union Railway Company except, where employees covered by the Agreement were installing or maintaining telephone cables or line wires from the telephone company switchboard or other connection to the phone instruments in yards or terminals as of April 1, 1981, such cables or wires shall continue to be installed or maintained by such employees."

The Organization points out that the Scope Rule specifically covers the construction and installation of apparatus used in the transmission of a signal communications system. In its view, forces from an outside contractor constructed and installed this equipment on Carrier's lines during the months of September, October, November and December 1984, and January 1985. Thus, the Organization reasons that Carrier's actions violated the specific language of the Scope Rule.

The Organization notes Carrier's contention that the contracted work which involved the installation and construction of a Microwave System consists solely of radio technology. However, the Organization points out, the microwave is now used to transmit the remote control and indication of signals and switches which represents technological advancement, rather than the introduction of a new system.

For these reasons, the Organization asks that the Claim be sustained. It seeks appropriate man hours at the punitive rate for the time that the outside contractor spent in the construction and installation of the Microwave System in the late months of 1984 and January 1985.

Carrier, on the other hand, denies that it violated the Agreement. First, Carrier insists that the Scope Rule is general in nature and does not accrue to BRS represented employees. In Carrier's view, for a claim to be valid under such a Rule, the Organization must prove that the disputed work was traditionally and exclusively performed by the employees on a system-wide basis. According to Carrier, the Organization has failed to meet that burden here.

Carrier maintains that the Microwave System is a radio system and not a signal system, apparatus or device. As such, the work in connection with this system does not accrue to BRS represented employees.

Carrier further contends that it is not required to piecemeal work by having Claimants perform a portion while the contractor performs another portion.

Finally, Carrier notes that all of the Claimants were fully employed during the period the disputed work was performed by the contractor. Since no Claimant suffered any monetary loss thereby, Carrier maintains that even if an Agreement violation is found, no monetary relief should be awarded.

After a careful review of the record evidence, we are convinced that the Claim must be rejected. This is so for a number of reasons.

First, it is clear that the Scope Rule is general in nature. That is, the Rule does not specifically cover the work in dispute. Thus, to sustain its Claim, the Organization must establish its right to this work by custom, tradition, and practice on a system-wide basis. The Organization has failed to meet this burden.

Second, the evidence established that the Microwave System is not a radio system but instead involves radio technology. Such work involved in the radio technology has not been shown to be exclusively performed by BRS represented employees. It also is not the type of work intended to be "...performed by employees represented by the Brotherhood of Railroad Signalmen." As such, the savings clause to the Scope Rule also does not support the Organization's Claim.

Further, it is clear from the facts of the record that special skills and expertise were required to construct the system. When special skills, not possessed by employees, are required to perform the work it is permissible for the work to be contracted out (See Third Division Awards 7805, 11862, and 11969). This was precisely the situation in the instant Claim. As a result, it was proper for Carrier to contract out the work.

In addition, it has been well established by the Board that work contracted out will be considered as a whole. It will not be artificially divided into discreet units such that the employees could have performed some of the work (See Third Division Awards 6112 and 12317). Hence, Carrier was not required to "piecemeal" the work in order to enable employees to perform some small portion thereof.

Finally, Public Law Board No. 2543, cited by Carrier is relevant to this dispute. It concludes that, "the installation and maintenance of radios ...was never at any time the responsibility or work assigned to employees represented by BRS." Accordingly, and for these reasons, the Claim must be denied.

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 28th day of March 1991.