

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC.WL)

Claim on behalf of C. S. Richins, W. Lee, Jr. and J. O. McArthur, to be compensated an amount equal to the man-hours worked or paid to the contractor and his forces, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule when it allowed or permitted a contractor to dig and cover signal cables near MP 764-764.8 and 766.9-767.8, between June 6 and 17, 1988." Carrier file SIG-152-465. BRS File Case No. 7909-SPTC.WL.

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 is a Scope Rule Claim involving work performed by an outside contractor between June 6, 1988, and June 17, 1988. During the period, the contractor operated two backhoes and one bulldozer to dig trenches and cover cable. It is this work that is being claimed by the Organization. The installation of the cable was performed by members of the craft.

The Board has carefully reviewed the evidence properly before us, including the many Awards relied upon by the parties, and finds that the Organization on the property has not met its burden of proof. In so concluding, we mainly note the Carrier's denial of December 30, 1988, when it in pertinent part stated:

"Contrary to your allegations, the Scope Rule of the Signalmen's Agreement was not violated due to the fact that there is nothing in the Scope Rule which provides for signalmen to operate either backhoes or caterpillars. Work of this nature performed by Sorenson Construction Company has not historically nor traditionally been work that has consistently been done by the Signalmen's Organization."

The material statement was never rebutted by the Organization on the property and, therefore, stands as factual.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.