

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30417
Docket No. SG-30878
94-3-92-3-720

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company (C&NWT):

- (a) Carrier violated the current agreement of May 1, 1985, as amended, especially rule #1 Scope, when Carrier required or allowed Cox Construction Company, which is the general contractor for the Cicero Avenue renewal project, AFE 89648, to install 'Plastibeton' at Kenton Interlocker on April 16, 19 and 22, 1991. 'Plastibeton' is a product name for a precast cable trench or conduit system produced by PB Inc./Lone Star Industries, Inc. See copies of pictures and description enclosed.
- (b) Carrier should now be required to compensate the following members of Berkeley signal crews 2 & 3, for 10 hours each at their respective straight time rates of pay on each of the following days:

| <u>April 16, 1991</u> | <u>Employee #</u> | <u>Job</u> | <u>Position</u> |
|-----------------------|-------------------|------------|-----------------|
| K. Fisher | 120765 | 010-03 | Crew Foreman |
| J. Wendell | 136025 | 010-02 | Crew Foreman |
| T.S. Omaye | 133791 | 300-03 | Signalman |
| L.B. Frank | 136697 | 040-02 | Ld. Signalman |
| D. Westfall | 136923 | 040-03 | Ld. Signalman |
| R.E. Gillen | 135592 | 041-03 | Signalman |

| <u>April 19, 1991</u> | <u>Employee #</u> | <u>Job</u> | <u>Position</u> |
|-----------------------|-------------------|------------|-----------------|
| J. Wendell | 136025 | 010-02 | Crew Foreman |
| M. VanLandingham | 064492 | 304-02 | Signalman |
| L.B. Frank | 136697 | 040-02 | Ld. Signalman |
| J.R. Walker | 134807 | 303-02 | Signalman |
| J. Weber | 117449 | 041-02 | Ld. Signalman |
| J. Rassmussen | 120311 | 302-02 | Signalman |

| <u>April 22, 1991</u> | <u>Employee #</u> | <u>Job</u> | <u>Position</u> |
|-----------------------|-------------------|------------|-----------------|
| J. Wendell | 136025 | 010-02 | Crew Foreman |
| M. VanLandingham | 064492 | 304-02 | Signalman |
| J. R. Walker | 134807 | 040-02 | Signalman |
| J. Weber | 117449 | 041-02 | Ld. Signalman |
| J. Rassmussen | 120311 | 302-02 | Signalman |
| R. Peoples | 137621 | 301-02 | Signalman |

This is a total of 180 hours straight time,
the amount of time spent by Cox Construction
installing this 'Plastibeton.'" Gen'l.
Chmn's. File No. 8-AV-49. Carrier's File No.
79-91-14. BRS File Case No. 8784-C&NWT.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was initiated, based on an assertion that the Carrier permitted outside forces to perform certain recognized signal work, when a conduit system was installed along the Carrier's right-of-way at a designated location on specified days.

On the property, the parties disputed whether or not the Carrier had control over the work to be performed and, in its presentation to the Board, the Carrier argued that the Organization's scope rule deals with work used exclusively for railway signaling purposes, but the conduit was intended and is being used for other than signal purposes.

The Carrier cited a number of awards dealing with projects which are not under the Carrier contract and/or under the control of the Carrier.

In our review of the record, regardless of the Organization's contention that the Carrier should have taken control of the project at a point in time, the Carrier permitted the state to continue with the installation and, although the Carrier benefitted from the work in question, it is clear that the Carrier had no control over the work performed nor did the Carrier spend any capital for the initial installation at issue.

It is not disputed that the state awarded the contract to the contractor and, thus, we find no Carrier violation of the Agreement.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.