Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35181
Docket No. SG-34414
00-3-98-3-22

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad:

Claim on behalf of M.D. Warner, R.C. Storms, D.N. Jones, and A.L. McFarlin for payment of 208 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and the Atlanta Terminal Agreement, when it used a contractor to install equipment for the signal system at the Atlanta Terminal from November 6 to December 11, 1996, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(96-44). General Chairman's File No. 97-208-1. BRS File Case No. 10431-L&N."

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 were given due notice of hearing thereon.

As Third Parties in Interest, the National Conference of Firemen & Oilers, as well as the Sheet Metal Workers' International Association, were advised of the pendency of this dispute, but chose not to file a Submission with the Board. The Brotherhood of Maintenance of Way Employes chose to file a Submission with the Board.

On December 30, 1996, the Organization filed a claim due to the Carrier's alleged violation of the Agreement between the parties, specifically Rule 1, Scope and paragraph 3(c) of the Atlanta Terminal Agreement. The Organization asserts that the Carrier violated the Agreement when it used forces other than those listed in the Rules to perform work at the Consolidated Atlanta Terminal on November 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, December 2, 3, 4, 5, 6, 9, 10, and 11, 1996. The Organization argues that on the above dates, the Carrier instructed and/or directed an outside contractor, the Kaeser Compressor Company, to install air pipelines to four air compressors, two air dryers, and one air receiver tank. The Organization argues that the work in question had been done exclusively by signal forces in the past and that the pipelines at issue were used solely for the operation of signal equipment. The Organization maintains that the Claimants were ready, willing, available, and qualified to perform the work and that the Carrier failed to give the Claimants the opportunity to do so. The Organization also argues that even though the Claimants were fully employed at the time, the Carrier did not have the right to use an outside contractor to perform the work at issue and could have used the Claimants on an overtime basis. In addition, the Organization contends that the work in question does not belong to BMWE-represented employees, because the work involved signal equipment. The Organization further argues that although some kinds of work are common to several classes of employees, it is the purpose of the work that determines which class of employees has preference to the work. The Organization asserts that the work involved the installation of pipelines used exclusively for the signal system and, under the Scope Rule, is Signalmen's work. The Organization contends that the work in question had nothing to do with equipment installed and maintained by other crafts. In addition, the Organization argues that there is no requirement to demonstrate the exclusive performance of work when the work in question has been given to a contractor. The Organization requests that the Carrier be required to pay each Claimant 208 hours at time and one-half each Claimant's respective rate of pay.

The Carrier denied the claim, arguing that the work at issue is not reserved exclusively to the Organization and, in fact, has been performed by Brotherhood of Maintenance of Way employees. The Carrier maintains that the BMWE Agreement, particularly Appendix 5, identifies the work in question and delegates responsibility for the work to BMWE-represented employees. The Carrier also contends that the penalty claimed by the Organization is for work that involved no overtime, and that the Organization offered no showing that the amount of time claimed is the amount of time actually worked by the contractor. The Carrier maintains that even if it is found to be in violation and a penalty is due, the appropriate penalty for work lost is the pro-rata or straight-time rate. In addition, the Carrier asserts that Signalman D. N. Jones left his position on November 18, 1996 and is not entitled to any compensation and that Claimants M. D. Warner, R. C. Storms, and A. L. McFarlin did not suffer any loss of earnings as a result of the contractor performing the work in question as they were on duty and under pay working on other projects that could not be delayed.

A Third-Party Response to the Organization's and the Carrier's positions was filed by the Brotherhood of Maintenance of Way Employes. BMWE concurred with BRS. BMWE maintains that the Board should sustain BRS's claim in full, which would not conflict with Agreements in effect between BMWE and the Carrier. BMWE maintains that although general air line installation/maintenance at other than the locations listed in Appendix 5 is reserved to BMWE-represented forces, air line maintenance to maintain signal system operations may be performed by forces represented by BRS. BMWE argues that BRS has the contract right to maintain signal systems and that part of that maintenance may include the installation of air lines to air compressors, air dryers, and air receiver tanks connected to the signal system, which is work specifically covered by the BRS Scope Rule. BMWE contends that air line installation/maintenance is a classic example of overlapping craft jurisdiction. BMWE also maintains that the Carrier's insistence on a Third-Party Notice is nothing but an attempt to pit one union against another in an attempt to free the Carrier from contractual obligations it has to both. BMWE further argues that the case at hand is a contracting out of work case and does not involve a dispute between crafts and that the Carrier disregarded its obligations to both crafts by contracting out the work to an outside contractor. BMWE also argues that if the Carrier is allowed to maintain inadequate manpower levels and argue that its current employees are fully employed and cannot perform required work, the Carrier would then contract out ever increasing levels of work by simply maintaining inadequate force levels.

The Carrier rebutted BMWE's Third-Party Response, contending that BMWE's position supports the Carrier's position that no craft has the exclusive right to perform the work in question. The Carrier asserts that it had the authority to use its own discretion in assigning the disputed work and that no restrictions exist in assigning the work to a particular craft or class of employees.

The Board reviewed the record in this case, and we find that the Organization has proven that the Carrier violated the Agreement when it used a contractor to install pipelines for the operation of the signal system at the Atlanta Terminal in November and December 1996. The Scope Rule makes it clear that the installation of pipelines for the operation of a signal system is reserved to employees covered by the Agreement. Rule 1 states:

> "This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the construction, installation, . . . and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes. . . ."

The Organization's original claim alleged that the Carrier violated the Scope Rule when it used forces other than those listed in the Rules to perform the work at issue in this case. While the dispute was progressed on the property, the Carrier never refuted the Organization's assertion that the involved work is exclusively reserved to Signalmen.

Finally, with respect to the relief, the Board must find that while the Organization did not present sufficient evidence to support its claim that each of the four Claimants was entitled to 208 hours at the time and one-half rate, a thorough review of the record indicates that Claimants McFarlin, Storms and Warner are entitled to 40 hours each at the straight time rate. Claimant Jones is not entitled to any compensation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of December, 2000.