

Award No. 11862
Docket No. SG-11387

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Chicago Terminal Railroad Company that the Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on July 15, 1958, it assigned and/or permitted employees of an outside contractor, who hold no rights under the current Signalmen's Agreement, to perform certain trench digging work for the installation of signal cables at the Forest Park Interlocking, and that therefore the Carrier be required to compensate all members of Signal Gang No. 2 working under Foreman Jim Duplessis for three days' pay each as a result of the above-cited agreement violation.

EMPLOYES' STATEMENT OF FACTS: During the first part of 1958, the Carrier and its signal forces were engaged in a signal construction project in connection with the westward extension of the Congress Street Expressway. A substantial amount of signal work was required to be performed in connection with this Expressway project, which included the construction of a new interlocking tower at Forest Park, Illinois.

Some time prior to July 15, 1958, the Carrier entered into an agreement with an outside contractor to furnish trenching equipment and an operator to dig certain signal trenches between the new tower and Des Plaines Avenue, a distance of some 1200 feet.

On July 15, 1958, the 1200 feet of signal trench was dug by the employee of the outside contractor using a jeep with trenching equipment.

General Chairman C. L. Siedschlag, of the Brotherhood of Railroad Signalmen, filed an immediate protest and claim against the assignment of this trench digging work to an outside contractor with Division Engineer J. R. Rymer under date of July 17, 1958, as follows:

"It has come to my attention that the Company contracted certain trench digging work for installation of signal cables at the Forest Park Interlocking—this cable run necessitating the trench is from Forest Park Tower to Desplaines Avenue.

" * * * The work generally recognized as signal work belongs to the employes of the Carrier covered under the Scope Rule of the Petitioners' Agreement. But the Scope Rule of a collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad. That is, the Scope Rule of an agreement on one property does not cover like work on another property not under the control of the specific Carrier. On the other hand, all of the work of the type embraced within a collective agreement belongs to the employes covered thereunder. The Carrier may not remove it therefrom by contract, except under conditions not pertinent here. Award 5218 has been cited on behalf of Petitioners. But in that case the work involved tracks and docks owned by the Carrier, and the Carrier contracted out the work.

* * * * *

A careful analysis of the facts of record leads us to the conclusion that the work in question did not belong to the Carrier and, therefore, was not covered by the Scope Rule of the Signalmen's Agreement. This is not a case where the Carrier farmed out work; it never controlled it or had the disposition of it. We must conclude, therefore, that the claims are not valid."

Carrier's Summary

The Carrier has shown that the work here about which protest has now been made did not come within an application of the Scope Rule of the Signalmen's Agreement. The claim in this case is not valid. The Carrier respectfully requests that this Division so hold and this claim in its entirety be declined.

OPINION OF BOARD: In the joint submission to the Board the parties agreed that the facts are as follows: During the first part of 1958, the Carrier and its signal forces were engaged in a signal construction project in connection with the westward extension of the Congress Street Expressway. Some time prior to July 15, 1958, the Carrier entered into an agreement with an outside contractor to furnish trenching equipment and an operator to dig certain signal trenches between the new tower and Des Plaines Avenue a distance of some 1200 feet. On July 15, 1958, the 1200 feet of signal trench was dug by the employe of the outside contractor using a jeep with trenching equipment.

During the handling of the dispute on the property, the Carrier acknowledged the fact that the digging of trenches in connection with laying signal cables should be performed by signal employes, but alleged that the circumstances in the instant case created an exception to the Scope Rule of the Signalmen's Agreement that would permit it to contract the portion of the signal work as it did to the employes of the outside contractor. The Carrier sought to justify its action on the ground that there were time requirements and the need for specialized equipment which the said Carrier did not have among its regular equipment. The Organization takes the position that all of the signal work in the signal construction project involved in the instant dispute accrues to the signal employes of the Carrier. To assign any of that work to any person who is not covered by the Signalmen's Agreement is a violation of that Agreement. The Carrier takes the position that here there was a need for special equipment not possessed by the Carrier, and not ordi-

narily used by the Carrier, to perform a unit of work under conditions where there was a pressing need for speed and expedition.

The general rule is well stated in Award No. 7805:

"It has been said on many prior occasions that, generally, a Carrier may not contract with others for the performance of work embraced within the scope rule of a collective agreement. See, for example, Awards 3823, 5237, 4158 and 5151. Exceptions to this general rule have been recognized * * * for example, where there was need for special equipment not ordinarily used or possessed by the Carrier, or where special skills not normally found in the Carrier's were needed, * * * or where because of time requirements it was not feasible to adequately perform the work with the Carrier's forces and equipment."

The question presented by this dispute boils down to an evaluation as to whether or not the need for specialized equipment and skills plus the pressure of a deadline on time were such as to create an exception to the general rule within the principles of the adjudicated cases. The Carrier contends that when it contracted out the work of trenching it took this action because it did not possess the specialized equipment nor the skilled employees required to do the job. It further contends that it had a deadline by which time it was required to complete the work at hand. It cannot be successfully maintained, on the state of the record before us, that these contentions are without merit.

Under the circumstances of this case the Organization has not sustained its burden of proving that the Carrier violated the exception to the general rule as set forth in the Opinion supra.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate its Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.