Award No. 12527
Docket No. SG-12049

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when they contract or otherwise farm out that part of recognized signal work being done at Meridian, Miss., N.O.&N.E. Division, by persons not covered and who hold no seniority or other rights under the Signalmen's Agreement.

(b) Mr. V. P. Marshall, Signal Maintainer, Meridian, Miss., et al., who would be entitled to perform the signal work done by Contractor and his forces, be compensated at their respective rates of pay on a proportionate basis for all time (man-hours) worked by persons not covered and who hold no seniority or other rights under the Signalmen's Agreement, in performing recognized signal work on the car-repair-track facilities at Meridian, Miss. Claim to begin on first day that outside persons performed any signal work, or February 21, 1959, and continue thereafter so long as the Contractor and his forces are permitted to perform recognized signal work, or until a proper correction is made and signal forces permitted to perform the signal work.

(c) Each furloughed signal employe who retains seniority rights be considered as available and entitled to first consideration for the extra work in his respective class, and compensated as indicated in item (b) above, for whatever signal work he would be due with respect to this claim. (Carrier's file SG-13815.)

EMPLOYES' STATEMENT OF FACTS: The work involved in this dispute was performed on what is referred to as the N. O. & N. E. Division of the Southern Railway System. Hereinafter, any reference we make to the "Carrier" will not necessarily be confined to the New Orleans and Northeastern Railroad Company (N. O. & N. E.), but will apply to the entire Southern Railway System, as covered by the current Signalmen's Agreement in effect on this

has not been adversely affected in any manner whatsoever. He could not, by the strained interpretation which the Brotherhood here attempts to have placed upon the effective Signalmen's Agreement, have performed the work of a signal maintainer on his regular assignment and the work of signalman in making, or assisting in making, the referred to installation of the electrical equipment at Meridian. On the basis of the above-referred to awards, claim on his behalf should be denied for this reason, if for no other and there are others.

CONCLUSION

Carrier has shown conclusively that:

(a) The claim and demand which the Brotherhood here attempts to assert are barred, in that the Brotherhood has not complied with the law, the Rules of Procedure of the Adjustment Board or the effective agreement in evidence. In this situation, the Board has no jurisdiction over the claim and demand and should dismiss them for want of jurisdiction.

(b) The effective Signalmen's Agreement was not violated as alleged, and the claim and demand here made are not supported by it. The involved work was not "signal work" or "generally recognized signal work"; nor was there a signal system involved in the installation made at the car repair track at Meridian. To the contrary, the involved work was purely electrical work and an electrical contractor was engaged to perform it. It was electrical work on a car repair facility — a Mechanical Department operation. It was not a Signal and Electrical Department operation.

(c) The principles of prior awards of the Board fully support the Carrier's action in contracting the here involved work. Furthermore, the scope rule of the agreement in evidence recognizes in clear, unambiguous language the management's right to contract large installations of the type here involved in connection with the performance of new work. The construction project at Meridian, Miss., was, without question, new work.

(d) The named claimant was on duty and under pay. Prior awards of the Board have denied claims without even considering the merits of same in situations where, as here, the claimant was on duty.

The claim and demand, being barred, should be dismissed by the Board for want of jurisdiction. However, if, despite this fact, the Board assumes jurisdiction, it cannot do other than make a denial award, for an award of any other type would be contrary not only to the Railway Labor Act and the Rules of Procedure of the Adjustment Board, but to the agreement in evidence as well.

OPINION OF BOARD: Awards Nos. 11369, 11162, and 11612 held that the work in question was not signalmen's work.

We concur in those opinions and accordingly hold that Carrier had the right to contract out the work.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.