

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

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

(a) The Carrier violated the current Signalmen's Agreement, as amended, on the CNO&TP Division from December 27, 1962, through February 11, 1963, when a contractor and his force (Purcell Construction Company of Broadhead, Kentucky) were used for approximately 408 man-hours to dig 14,400 feet of trench for the exclusive purpose of burying a signal cable in connection with a track relocation program.

(b) The Carrier be required to compensate members of a signal gang on the territory, at their respective hourly punitive rates, proportionate shares of the time devoted by the contractor's force, as follows:

Foreman J. A. Watts
Signalman J. W. Headden
Signalman J. N. Goff
Helper A. L. Roman
Leading Signalman W. H. Denney
Assistant Signalman N. D. Carter
Assistant Signalman H. Singleton
Assistant Signalmen J. Carson
Cook C. W. Bryson

(c) The individuals listed in paragraph (b), who were deprived of the extra time that it would have taken them to do the work prior to February 11, 1963, additionally claim all time on a continuing basis subsequent to that date that signal work is done by persons not covered and who hold no seniority or other rights under the Signalmen's Agreement, or until the proper correction is made.

Carrier's signal forces installed signals and CTC on the approximately 25 miles of newly constructed track.

One of the grading contractors on the project was S. S. Purcell Jr. Company, Broadhead, Ky. Because of the heavy boulders and sharp rocks through cuts and on fills in the area between Tateville and Greenwood, it was decided that a specially designed armored CTC code cable should be installed in the ground for 15,000 feet to carry CTC circuits, which prior thereto were carried on pole lines, and to install conventional armored cable in the ground for the remaining distance of 33,000 feet. It was out of the question to even consider having the trench for the armored cable dug manually with picks and shovels, or even with any ditch digging machinery which Carrier owned. Furthermore the time in which the work had to be performed was limited. In this situation Carrier contracted with S. S. Purcell Jr. Company to excavate a ditch approximately 12 inches wide, 18 inches deep and 10 feet west of the center line where track No. 2 would be located on the grade and through the cuts and over the fills between Tateville, Ky., milepost 170, Greenwood, Ky., milepost 179, for a distance of approximately 9 miles.

On December 27, 1962, the contractor began digging the trench for the armored cable with special heavy duty machines. The contractor used a heavy trenching machine. In some areas where the trenching machine could not be used a backhoe machine was used in removing the heavy boulders. Explosives were also used in blasting out some of the rock.

After the trench was dug Carrier's signal employees laid the armored cable in it. The contractor hauled dirt and screenings to the scene and distributed them. Carrier's signal forces shoveled in the trench on top of the cable as a cushion approximately 2 inches of dirt and screenings, after which the contractor's machines filled the trench covering the cable. The referred to work was completed in March 1963. This was long before train operations over the new track began.

The six construction projects were completed and the new line was opened for train operations in July 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Brotherhood complains of the subcontracting of the digging of a ditch and backfilling of it after installation by Brotherhood employees of 14,400 feet of signal cable. Carrier argues: 1. that the involved work does not belong exclusively to Brotherhood; 2. that the equipment needed was not possessed by it, and skills required were not available from its Brotherhood employees; and 3. that as a "larger installation in connection with new work" it was in any case excepted from coverage of the Scope Rule under the terms of the fourth paragraph of that Rule.

The whole job involved is described by Carrier without contradiction as follows:

"... six major line changes were made on the CNO&TP . . . New cuts were graded, new fills were constructed, nine tunnels were by-passed by line changes, three being by-passed through new tunnels and one enlarged. Curves were eliminated and grades reduced. Approximately 25 miles of new railroad was built to by-pass tunnels.

When the new track was built it was necessary to install signals on such track. All of this was new construction. None of it was maintenance or repair work.

All grading and excavation work in connection with these changes was contracted in accordance with the established and recognized practice."

Carrier's signal forces installed signals and CTC on the approximately 25 miles of newly constructed track.

Carrier's argument that digging and backfilling in connection with installation of the signals and CTC is not covered by and reserved to Brotherhood by the Agreement is wrong. We have held often that such "unskilled" work, when done as a necessary incident to the skilled signal work, is covered by the Agreement. (See Award No. 14371)

We are of the opinion, however, that Carrier has shown the necessary basis for an exception to the Scope Rule. The signal work part of the major project here was the installation of signals and CTC on approximately 25 miles of newly constructed track. On a project that large, particularly when such work was also required on other parts of the project, the excavating, ditch digging and backfilling is reasonably separable from the laying of cable and installation of the signals. And it is on the face of it a "large installation."

Since we find that fourth paragraph of the Scope Rule relieved Carrier of its obligation to assign the involved work to its Brotherhood employees, we need not deal with the argument as to whether the skills and equipment availability warranted the contracting out in this case.

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 Agreement 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 19th day of April 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.