

Award No. 15808
Docket No. SG-15937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railway Company that:

CLAIM NO. 1.

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when, on July 14, 1964, it arbitrarily assigned and/or required a Contractor and his forces to assist in relocation of signal apparatus at or near the North Headblock location at Mulberry, Kansas.

(b) The Carrier be required to pay Assistant Signalmen J. R. McCrary, L. G. Partin, Jr., W. P. Kirton, and W. J. H. Mulkey — all laid-off Signal Department employes — eight (8) hours' pay each at the overtime rate.

CLAIM NO. 2.

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when on July 29, 1964, it arbitrarily assigned and/or required a Contractor and his forces to assist in relocation and removal of signal apparatus at or near the North Headblock location at Drexel, Missouri.

(b) The Carrier be required to pay Assistant Signalmen J. R. McCrary, L. G. Partin, Jr., and W. P. Kirton — all laid-off Signal Department employes — eight (8) hours' pay at the overtime rate.

CLAIM NO. 3.

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when, between September 8 and October 15, 1964, for a total of six hundred eighteen (618) hours, it arbitrarily assigned and/or required the forces of a Contractor (C. & C.

Electric Company) and its subcontractor (Yor-Wich Construction) to perform work of installing conduit in which underground cables for traffic controller installation were to be run at intersections of KCS tracks with Louisiana and McNeil Streets in Shreveport, Louisiana.

(b) The Carrier be required to pay Assistant Signalmen J. R. McCrary, L. G. Partin, W. P. Kirton, W. J. H. Mulkey, and J. A. Killian; Signal Helpers J. R. Anderson and B. J. Marchant — furloughed employees of Kansas City Southern Signal Department — eighty-eight (88) hours' pay each at their respective rates.

[Carrier's File: 013.31-71 (1, 2, 3)]

EMPLOYES' STATEMENT OF FACTS: This dispute is a combination of three claims that were initiated separately and combined at the last stage of handling on the property. All involve the same general issue — the contracting out of Signal work. They are designated in our Statement of Claim as Claim Numbers 1, 2, and 3.

Claim No. 1 is based on Carrier's use on July 14, 1964, of a contractor and his forces in the relocation of semaphore signals at or near Mulberry, Kansas. Claimants are four laid-off Assistant Signalmen — J. R. McCrary, L. G. Partin, Jr., W. P. Kirton, and W. J. H. Mulkey. They claim eight (8) hours' pay each at their overtime rates.

Claim No. 2 is based on Carrier's use on July 29, 1964, of a contractor and his forces in the relocation of semaphore signals at or near Drexel, Missouri. Claimants are three laid-off Assistant Signalmen — J. R. McCrary, L. G. Partin, Jr., and W. P. Kirton. They claim eight (8) hours' pay each at their overtime rates.

Claim No. 3 is based on Carrier's use between September 8 and October 15, 1964, of contractors and their forces in the installation of conduit for signal cables at the intersections of Louisiana and McNeil Streets and the KCS tracks in Shreveport, Louisiana. Claimants are four laid-off Assistant Signalmen and two laid-off Signal Helpers — J. R. McCrary, L. G. Partin, W. P. Kirton, W. J. H. Mulkey, and J. A. Killian, B. J. Marchant. They claim eighty-eight (88) hours' pay each at their respective rates.

All correspondence pertinent to the three claims and their handling on the property is attached hereto and identified with Brotherhood's Exhibit numbers. Some letters refer only to one of the three claims; these are marked Brotherhood's Exhibit No. 1-A, 2-A, 3-A, etc. One letter refers to both Claims 1 and 2; it is marked Brotherhood's Exhibit No. 1-2-H. The remaining four letters refer to all three claims; they are marked Brotherhood's Exhibit Numbers 1-2-3-J, 1-2-3-K, 1-2-3-M, and 1-2-3-N. The exhibits are arranged chronologically, and this order is designated by means of the letters, "A" through "N". Insofar as it was possible, without duplication, the exhibits have been grouped also according to claim number.

As indicated by the correspondence cited above, this dispute was handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

made to the back hoe, but proceeded to dismantle the signals, moved same to the new location in two sections on a push car and made the installation. Contractor did not perform any service in connection with the relocation of these signals.

CLAIM NO. 3.

At Shreveport, Louisiana, Carrier was required to install flasher signals at two grade crossings where its tracks intersect two busy streets identified as Louisiana Avenue and McNeil Street in downtown Shreveport, a city having a population of about 200,000. In order to perform this project, approximately 300 feet of the city's concrete streets and sidewalks had to be broken to permit excavation and laying of 400 feet of conduit and installation of manholes and boxes. Because of the heavy traffic and the numerous telephone, electric power, gas and water lines in these intersections, Carrier is not permitted nor licensed to break the street pavement or dig in the vicinity of the various utility lines and had to have the work performed by a city-licensed contractor. Carrier's signal forces were used for the installation of the cables in the conduits.

OPINION OF BOARD: The Claimants in 1, 2 and 3, were all furloughed signalmen who complain that Carrier contracted out the moving of semaphore signals and therefore violated the Scope of the Agreement of June 1, 1944.

Carrier defends its contracting out the jobs on the grounds that primarily the work was not within the Scope, and further, that it did not have sufficient equipment for the jobs, that in Claim No. 2 the contractor did not do the job and that the municipality involved in Claim No. 3 required that a licensed contractor do the work.

While interpreting a very similar Scope Rule in a signalman claim, the Third Division held that work in connection with the movement of materials from one point "... to a signal construction or maintenance job for immediate use on such job, is the exclusive work of signalmen." See Award 5046 (Carter), and other awards there cited. Although the work here was the "moving" of signal equipment for the purpose of relocation, the record discloses that similar work had been performed by signalmen on the system, and while Carrier contends that such prior work was dismantling, it made the tacit admission that such work was previously done by signalmen when it said that it had "... no recollection whatsoever of a semaphore signal ever being moved intact by signal forces without special mechanical assistance." Further, Carrier acknowledges that in Claim No. 2, the work was in fact done by the signalmen, within the time required, when the contractor's equipment broke down. Clearly, the work here involved was, under the Awards and the practice on the property, signal work such as the parties intended to be within the Scope Rule and such as signalmen could perform. Also see, Award 3215 (Carter).

The work in Claim No. 2 having been performed by signalmen, gives the Claimants therein no cause to complain. Therefore, Claim No. 2 should be denied in that the Carrier did not actually violate the Agreement.

As concerns Claim No. 3, Carrier's assertion that it was required to engage a city licensed contractor as it was not permitted to perform the work, is not refuted by the Organization and is well taken. The logic and common sense of Referee Hamilton's holding in Award 12970, is binding on us here. He said:

". . . It is basic that the agreements and contracts which this Board is called upon to interpret, must be construed in concert with existing laws and regulations.

But for this ordinance, the work would clearly be assigned to the signalmen. However, due to the existence of this ordinance, we hold that the Carrier did not violate the agreement when it allowed an outside contractor to perform the work in question."

Carrier in Claim No. 3 was faced with precisely the same type ordinance and problem. Therefore, Claim No. 3 should be denied, there being no violation of the Agreement.

Carrier further contends that none of the Claimants are parties in interest and that they are not entitled to the relief sought by them. Of course, consideration now need only be given to those Claimants under Claim No. 1. The various arguments of Carrier need not be seriously discussed except to say that Claimants were signalmen furloughed because of low manpower requirements by Carrier. The Agreement was for the protection of Claimants as well as those signalmen then employed. Thus, our requiring Carrier to pay Claimants, under Claim No. 1, is a consequence, not a penalty, and it need not be for work performed — it is primarily to enforce the Agreement. See Award 11984 (Rinehart); Award 10051 (Dugan).

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

That the parties waived oral hearing;

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

That with regard to Claims No. 2 and 3, the Agreement was not violated but with regard to Claim No. 1, the Agreement was violated.

AWARD

Claim No. 1 is sustained while Claims No. 2 and 3 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1967.

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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Interpretation No. 1 to Award No. 15808

Docket No. SG-15937

Name of Organization:

BROTHERHOOD OF RAILROAD SIGNALMEN

Name of Carrier:

KANSAS CITY SOUTHERN RAILWAY COMPANY

Upon application of the representative of the Carrier involved in the above Award that this Supplemental Division interpret the same in light of the dispute between the parties as to its meaning and application, pursuant to Section 3, First (m) of the Railway Labor Act, as approved 21 June, 1934, the following interpretation is made:

The requested interpretation arises as a result of our sustaining Claim No. 1 in Award 15808 which claim demanded eight hours' pay each at the overtime rate for furloughed employes because of an Agreement violation.

In this case, the Opinion of the Board states that Claim No. 1 is sustained "not as a penalty but as a consequence" of the Carrier's violation. Cited as authority are Awards 11984 (Rinehart) and 10051 (Dugan), both of which paid claims on a pro rata basis. Although the award statement fully sustains Claim No. 1, it is in conflict with the manifest intent of the opinion — Rule 25 not being available to Claimants inasmuch as they were at the time furloughed.

Regardless, an interpretation is not a rehearing, but an explanation of the Board's award. See Interpretation No. 1 (Serial No. 175) to Award 7409 (McMahon). Further, the Railway Labor Act, Section 3, First (m), makes awards "... final and binding upon both parties to the dispute." Therefore, Award No. 15808 must be paid on the time and one-half basis as required by the award statement.

Referee Bill Heskett, who sat with the Division as a member when Award 15808 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1968.

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