# Award No. 15906
# Docket No. SG-15624

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

John J. McGovern, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN

## THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when on or about January 15, 1964, it transferred or caused to have transferred to the State of Texas Highway Department generally recognized signal work of excavating, setting forms, and pouring concrete foundations for crossing signals at Mile Post 609 plus 5249 feet, near Eunice, Texas.

(b) Carrier be required to compensate Signal Gang No. 8 Employes, namely, F. Bradley, L. L. McMath, A. L. Hill, D. D. Blankenship, C. J. Adams, H. B. Browning, W. L. Kite, and J. L. Kite (engaged in the installation of lights and other protective devices for grade crossing traffic at this location) at their proper rates of pay on a proportionate basis for the amount of time consumed by persons not covered by the Signalmen's Agreement in performing the transferred generally recognized signal work. [Carrier's File: 132-57-23]

EMPLOYES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute arose because Carrier farmed out work in connection with the installation of highway crossing protection signals near Eunice, Texas. We contend that Carrier violated the Signalmen's Agreement when it farmed out this work, and ask that the signal gang employes who completed the installation be paid on a proportionate basis for the amount of time consumed by persons not covered by the Signalmen's Agreement in performing the disputed work.

The disputed work, which consisted of excavating, and installing the foundations for the crossing signals was performed on or about January 15, 1964. The instant claim was initiated on February 17, 1964, subsequently handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without

utilizing the foundation that had been installed by the Texas Highway Department or obligate this Carrier to demolish it so that it could be replaced by the employes you represent.

It is my further position that your claim for penalties is not only indefinite but is also excessive for the reason that you have not identified the 'total man hours' that were devoted to the work by employes of the Texas Highway Department, which is also unknown to this Carrier, which has, incidentally, been advised by the Texas Highway Department that the best available estimate of the cost of the installation is $1.00 labor for casting the concrete foundation, which are cast on a production basis.

Yours truly,

/s/ O. M. Ramsey"

The Brotherhood's claim was the subject of discussion between the petitioning Brotherhood's General Chairman, Mr. W. H. Lewis, and the respondent Carrier's representative in conference on November 20, 1964 during which the July 29, 1964 decision of the respondent Carrier's Assistant to Vice President, Mr. O. M. Ramsey, was reaffirmed.

It will be observed that the petitioning Brotherhood's claim includes a request that the Signal Foreman, F. Bradley, in charge and seven (7) other employes of Signal Gang No. 8 each be allowed additional compensation " * * * on a proportionate basis for the amount of time consumed by persons not covered by the Signalmen's Agreement in performing * * * the work of excavating, setting forms and pouring concrete foundations * * * " on which the metal reflectorized crossbuck grade crossing signs with automatic flashing lights were installed.

The petitioning Brotherhood has not identified the amount of time that was devoted by the Texas Highway Department's contractor to the construction of the aforementioned concrete foundations, and the respondent Carrier has also been unable to develop that information. As a matter of fact, in answer to an inquiry that was addressed to the Texas Highway Department by a representative of the Carrier regarding the amount of time that was devoted by that Department's contractor to installing the aforementioned concrete foundations, the Texas Highway Department advised that it was unable to furnish a breakdown of the cost thereof, and that, since the foundations were cast on a production basis and the cost thereof was thereby minimized, they would estimate the cost to be approximately $1.00 labor for casting the concrete foundations and approximately 10 cents labor for attaching the bolts and other hardware.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Organization in this case contends that the Carrier violated the current Signalmens' Agreement, as amended, specifically the Scope Rule therein, when it permitted other than Signal employes to excavate, construct and install concrete foundations for automatic highway crossing protection signals near Eunice, Texas. The Scope Rule reads as follows:

"This Agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department, including

foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, centralized traffic control, automatic highway crossing protective devices, including all their appurtenances and appliances, or perform any other work generally recognized as signal work.

The classifications as enumerated in Article 1 include all the employes of the Signal Department performing the work referred to under the heading of 'Scope'."

The Organization, in recognition of the above quoted Scope Rule, states that the Carrier is prohibited from contracting out work covered by its collective bargaining agreement.

The Carrier poses the argument that as a part of a general reconstruction and widening of a highway, the work complained of, was performed at the direction of the Texas Highway Department by an independent Contractor selected by the State. They further maintain that they had no control over the work nor were they in any way responsible for it.

As we review the record, we agree with the Carrier in this case. The facts are that the work in question was done by the Contractor selected by the State agency. Signal devices were later installed by the Signal employes, and this constituted the only work on this project controlled by the Carrier. We cannot find a violation of the Scope Rule in a situation when the State conceives, directs and is responsible for the work in question. The Carrier did not enter into a contract in this case. It was the State Highway Department. Finding no breach of contract, we will deny the claim.

**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 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 31st day of October 1967.

## DISSENT TO AWARD NO. 15906, DOCKET SG-15624

The Majority, the Referee and carrier members, has closed its eyes to essential facts and engaged in double talk to reach its erroneous and repugnant conclusion.

The claim was for work involved in the installation of concrete foundations upon which crossing signals were later mounted. Concerning this work the Majority says "the work in question was done by the Contractor selected by the State agency. Signal devices were later installed by the Signal employes, and this constituted the only work on this project controlled by the Carrier." Now, it is strange to us that, if the carrier did not have control of the installation of the foundations in question, it was necessary for the carrier to enter into an agreement with the State **granting** "authority to the State and/or its contractor, to install all warning signs of the design as shown on Exhibit A (See carrier's exhibits). That Exhibit A shows, as part of such signs, the foundations here in question (also see record page 36) and it is interesting to note that they are equipped with conduits suitable to the application of wiring necessary for crossing signals.

It is also interesting to note that the State approached the carrier concerning this work in December, 1962, (record page 51) that the carrier approached the State proposing the installation of signals in February, 1963 (record page 89), that in March, 1963, the State declined to join in the installation of signals (record page 90), that "when" the State so declined the carrier "decided that it would * * * install * * * signals at its own expense and so advised" the State, that "permission" to do so was "freely granted" by the State (record page 86), and that the work in question was performed on or about January 15, 1964 (record page 1). Hence, clearly, the carrier had control and its action was violative of the controlling Agreement with its employes.

From the foregoing, it is also patent that the Majority's statements that it was the State, not the carrier, that entered into a contract is in error. While it is true that the State entered into a contract, the carrier first contracted with the State.

The Majority's award is in error, and I, therefore, dissent.

**W. W. Altus**
For Labor Members
11-27-67

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