Award No. 16013
Docket No. SG-16303

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific Railroad Company - Ft. Worth and Denver Railway Co.

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company and Fort Worth and Denver Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 3, 11, 12, when, beginning about September 1, 1964, in the relocation of the signal and communications line, a contractor was employed to dig pole holes, and Signal Maintainer B. R. James was removed from his assignment at Teague, Texas, in order to absorb overtime which would otherwise have been created.

(b) The Carrier be required to compensate Signal Maintainers W. E. Harris, J. C. Haynes, and B. R. James an amount equal to that paid to the contractor for digging the holes.

(c) The Carrier also be required to compensate Signal Maintainer B. R. James at the punitive rate for all time he was improperly used off his assigned territory, such pay to begin September 2, 1964, and to be in addition to that which he has already been paid.

[Carrier's File: Jt SG-23]

EMPLOYES' STATEMENT OF FACTS: This dispute is based on the performance of Signal Work by other than Signal forces and Carrier's requiring a Signal Maintainer to suspend work on his regular assignment in order to work on another and avoid the payment of overtime.

Incident to the relocation of railroad facilities in connection with a flood control project authorized and financed by the Federal Government, a pole line change involving some 38 to 40 poles was started on or about September 1, 1964. The Federal project is known as the Bardwell Reservoir.

Carrier first assigned to its Signal employes and later contracted out to an individual named Bodine the work of digging the pole holes. It assigned Signal Maintainers J. B. Haynes, B. R. James, and W. E. Harris to perform the balance of the work of relocating the pole line.

In connection with relocation of the communication lines, the claimants, on September 1, 1964, attempted to dig the holes by hand but were unable to do so because the ground was hard and dry. On that date, after being unsuccessful in their efforts to dig the holes by hand, having broken the hand digger, claimant W. E. Harris acquainted his superiors with the situation and asked if he could hire a contractor to dig the holes with a mechanical digger.

Permission was given to claimant W. E. Harris to hire a contractor with a mechanical hole digger if he could find one and if he did find one he was instructed to find out how much the expense would be. Claimant W. E. Harris was unable to find a contractor in the vicinity of the work, so he journeyed to Teague, Texas, where he contacted a Mr. Bodine, who agreed to dig the holes for $1.00 a hole.

On September 2, 1964, the claimants worked within their regularly assigned hours in making the pole line change and the claimants assisted Mr. Bodine, the contractor, in digging the 40 holes within their tour of duty on that date.

On that date claimant Signal Maintainer B. R. James was being used to assist with the pole line change. His compensation is governed by Rule 23 which provides that the monthly rate covers all services rendered, with certain exceptions which are not applicable here.

The agreement between the Joint Texas Division and the Chicago, Rock Island and Pacific Railroad Company — Fort Worth and Denver Railway Company and the Brotherhood of Railroad Signalmen, effective January 1, 1955, is on file with the Board and by this reference is made part of this Submission.

OPINION OF BOARD: Claimants attempted to dig holes by hand in connection with the relocation of some communication lines, but were unable to do so because the ground was hard and dry. After being unsuccessful several times in their attempts to dig holes by hand, and after having broken the hand-digger, Claimant Harris called his superior, acquainted him with the situation, and requested permission to hire a contractor to dig the holes with a mechanical digger.

Permission to hire the Independent Contractor was granted and claimants worked within their regularly assigned hours in making the pole line change and assisted the Contractor in the digging of the 40 holes, all within their specified tour of duty. They are now claiming that Carrier, by acceding to their request for permission to hire an Independent Contractor, violated rules 3, 11, and 12 of the Agreement. Rule 3 is the classification rule. Rule 11 is captioned "Absorbing Overtime" and Rule 12 is entitled "Working Hours and Days." Essentially, the claim as submitted is divided into two separate parts, one pertaining to the Contractor having been engaged to dig the 40 holes, the other alleging that Claimant James was moved from one assignment to another, and in effect was performing work outside of his assigned territory.

Although Petitioner does not specificaliy allege a violation of the Scope Rule in the claim as submitted, it does maintain such a violation in the handling of the matter on the property. Rules 3, 11 and 12 of the basic Agreement, which Petitioner contends in its claim were violated, are, in our judgment, inapplicable to the factual situation of this case. We are not called upon to decide whether the Scope Rule covers the work because the record discloses

that it was the intent of Carrier that Claimants dig the holes and they would have dug them except for the hardness of the ground. Many awards have emanated from this Board enunciating the principle that Carrier may hire an Independent Contractor when special skills, equipment or material are required, or when the work in question is unusual or novel in character. It is readily admitted by the Claimants themselves that special equipment, not immediately available from Carrier's own resources, was required. This case falls within this exception. Hence we will deny sections (a) and (b) of the Claim. (See Awards 5304, 5563, 11862, 11142 inter alia.)

Directing our attention to section (c) of the Claim, wherein Petitioner demands that Claimant James be compensated at the punitive rate for all time he was working off his assigned territory, and that this is to be in addition to that which he has already been paid. This portion of the Claim, boiled down to its essence, poses the question as to whether the Carrier has the right to use a monthly rated Signal Maintainer off his regular territory, without incurring an obligation to pay him at the punitive rate. The Petitioner contends that Claimant is entitled to additional compensation, whereas Carrier contends that he is paid a monthly rate for all services rendered and that this is in accord with Rule 23 (a) Monthly Rated Employes. We agree with Carrier. Further this issue has been before this Board, involving the same Agreement and parties. Carrier's position has been upheld by these awards. (See Awards 15172, Lynch, 14242–14242, Perelson inter alia.) We will deny this portion of 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1967.

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