

Award No. 16106
Docket No. SG-16549

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NEW YORK CENTRAL COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Lines West of Buffalo) that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule No. 1, when, on twelve (12) days during the period from May 24, 1965 to June 9, 1965, Carrier contracted out the digging and backfilling of trenches for laying signal cable in connection with a Signal Construction Project at or near Dunkirk, New York.

(b) Carrier be required to compensate Signal Maintainer O. Birman eight (8) hours at the rate of \$2.9648 per hour for each of the following days:

May 24, 1965	June 2, 1965
May 25, 1965	June 3, 1965
May 26, 1965	June 4, 1965
May 27, 1965	June 7, 1965
May 28, 1965	June 8, 1965
June 1, 1965	June 9, 1965

a total of ninety-six (96) hours' pay - \$284.6208.
(Carrier's File: h-1)

EMPLOYEES' STATEMENT OF FACTS: This claim is the result of Carrier's contracting out work recognized to be covered by the Scope of the Signalmen's Agreement. The work involved operation of a back hoe-front end loader used to dig and backfill a trench for underground cable in connection with a signal construction project at or near Dunkirk, New York.

On twelve (12) different days during the period May 24, 1965 to June 9, 1965, an employee of a contracting company, Mr. Clark by name, was used to perform the Signal Work. As a result, claim on behalf of Signal Mechanic

A member of the signal gang working on this project was assigned to accompany the trencher and its operator at all times while working on Carrier's property.

Subsequently, a claim was filed by the Organization on behalf of Signal Mechanic O. Birman, who was assigned to the signal gang working on this project and who was on duty and under pay at all times when the leased trencher was being operated on Carrier's property; in fact, he was the member of the signal gang assigned to accompany the trencher and its operator while working on Carrier's property.

The aforesaid claims for an additional eight hours' pay per day at pro rata rate were filed for the following 12 days, viz.

May 24, 1965	June 2, 1965
May 25, 1965	June 3, 1965
May 26, 1965	June 4, 1965
May 27, 1965	June 7, 1965
May 28, 1965	June 8, 1965
June 1, 1965	June 9, 1965

although the leased trencher was not operated on Carrier's property on June 2, 8 and 9.

The Organization submitted and progressed the instant claims on the allegation that the Scope Rule of the Signalmen's Agreement was violated when an employe of the contractor operated the trencher on Carrier's right-of-way.

OPINION OF BOARD: This dispute involves the use of a ditching machine referred to as a "trencher" for digging and back filling ditches on Carrier's right-of-way for laying signal cable in connection with the relocation of a Traffic Control System control point in the vicinity of Dunkirk, New York. Carrier leased equipment from an outside contractor who was willing to lease said equipment only on condition that he would furnish the operator, which fact gives rise to the instant claim.

A member of the signal gang working on this project was assigned to accompany the trencher, and its operator, at all times while working on Carrier's property.

It is the position of the Brotherhood that the controlling agreement prohibits the Carrier's contracting the subject work to outsiders.

The Carrier asserts several defenses, including the fact that a member of the signal gang accompanied the machine and its operator.

The Carrier states that the accompanying employe would have operated the machine had it been available without an operator, and it is not shown that the employe accompanying the trencher performed any other work or service while so engaged.

The facts in this case are essentially the same as those in our Award No. 11451. We will deny this 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 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 1st day of March 1968.