Award No. 16159
Docket No. SG-16221

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

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

(a) On January 18, 1965, Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when Fairfield Electric Co-Op of Winnsboro, South Carolina, using seven (7) of its employes from 4:30 P. M. to 10:30 P. M., was employed to rebuild the Signal Transmission Lines at or near Mile Post R-86.

(b) Signal Maintainers J. L. Holsenback, Jr. and M. H. Hensley be paid, as a result of the violation, at their overtime rates for the forty-two (42) hours of work performed by the seven employes of the contracting company who have neither seniority nor contractual rights to the performance of the signal work. (Carrier's File: SG-21290.)

EMPLOYES' STATEMENT OF FACTS: This dispute, like so many others from this property which have either been decided by the Division or are awaiting adjudication, involves the performance of Signal Work by persons not covered by the Signalmen's Agreement.

At approximately 1:30 A. M. on Sunday, January 17, 1965, near Mile Post R-86.7, two 30-foot poles in the Signal Transmission Line were demolished as a result of the derailment of Train N. 253.

In order to restore the Signal System it was necessary to build the Signal Transmission Lines around the wreckage. Carrier contracted to have this work done by Fairfield Electric Co-Op of Winnsboro, South Carolina. Seven employes of that company worked six hours each, from 4:30 P. M. to 10:30 P. M. on January 18. During that time they framed, decorated, and set two 35-foot poles in a wooded area adjacent to the railroad. They strung in six new Signal Lines — three 4,400-volt and 3 low voltage — and spliced them into the existing Signal Transmission Lines on either side of the wreckage.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim on behalf of Signal Maintainers J. L. Holsenback, Jr., and M. H. Hensley was presented to Signal and Electrical Superintendent

ground while linemen of Fairfield Electric Co-op pulled them up and spliced and tied them in. Each wire was pulled up and tied in as it was pulled from the ground.

In the emergency the company was fully justified in having the referred to work performed in the manner just explained. As you may or may not know, the Adjustment Board has held on numerous occasions that departure from recognized and established practices is justified in emergencies.

Furthermore as you are aware, both claimants were employed at the work site on the date involved and were not therefore adversely affected in any manner. They could not have performed the work by themselves.

The claim is wholly without basis and unsupported by the agreement and for all these reasons I confirm my previous declination of the same."

On December 4, 1965 the Brotherhood's Vice General Chairman addressed the following letter to Carrier's Director of Labor Relations:

"Please refer to claim on behalf of Messrs. J. L. Holsenback, Jr. and M. H. Hensley, to be compensated at their respective overtime rates, on a proportional basis, for 42 hours worked at or near Columbia Division mile post R-86, by Fairfield Electric Co-op on January 18, 1965. Your file number SG-21290.

In your declination of June 23, 1965 and in your confiirmation, dated October 13, 1965, of previous declination, you decline the claim for straight time rate instead of overtime rate.

We would appreciate it if you would give me a letter confirming the claim was filed and declined for overtime rates of pay."

On December 21, 1965 Carrier's Director of Labor Relations responded to the Vice General Chairman's letter as follows:

"I have your letter of December 4 concerning claim on behalf of J. L. Holsenback, Jr. and M. H. Hensley, signal maintainers, for pay for 42 hours at their overtime rate of pay because of certain work on the high tension electrical transmission line in the vicinity of milepost 86 having been performed by Fairfield Electric Co-op on January 18, 1965.

I am sorry that I indicated that the claim was for pay at straight time rate and direct your attention to the fact that when we discussed the claim in conference on October 12 no mention was made of this fact. To set the record straight, however, I recognize the fact that you presented the claim on behalf of the two claimants for pay at their overtime rate of pay."

OPINION OF BOARD: At 1:30 A. M., Sunday, January 17, 1965, a derailment occurred tearing down about 600 feet of transmission line, including two 30 foot poles. At about 4:30 P. M. on Monday, January 18, the Carrier hired

an outside, independent Contractor to build a temporary line around the derailment.

The Organization contends that Carrier has therefore violated the Agreement, specifically the Scope and Classification rules. Carrier replies that the derailment constituted an emergent situation and that the employes, to succeed in this claim must demonstrate an exclusive right to the work. We have ruled on the identical issues in Award 15624, wherein we held that Carrier had violated the Scope Rule. We are not persuaded by Carrier's arguments to the effect that this was an emergency. There is no question that at the time of the derailment, an emergency did exist. But some 39 hours later, when the work was done by the outside Contractor, the emergency had abated. We for the reasons outlined in Award 15624 will sustain claim (a) and deny claim (b).

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 Employe involved in this dispute are respectievly 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 violated in accordance with Opinion.

AWARD

Claim (a) sustained.

Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1968.

DISSENT TO AWARD NO. 16159, DOCKET SG-16221, AND AWARD NO. 16160, DOCKET SG-16346

The Majority, consisting of the Referee and the Carrier Members, very properly found that the Agreement was violated. However, the manner in which part (b) of the Claim is disposed of leaves much to be desired when looked at from the standpoint of the Railway Labor Act's directive to parties to make and maintain agreements.

The let-the-Carrier-go-free treatment accorded this Carrier is particularly obnoxious where, as here, Carrier has persistently practiced thumbing its nose at the Scope Rule of the Agreement.

G. Orndorff
Labor Member

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