

Award No. 16160
Docket No. SG-16346

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 Brotherhood of Railroad Signalmen on the Southern Railway Company et al that:

(a) On April 9, 1965, Carrier violated the current Signalmen's Agreement, as amended, when Wingard Electric Company, Lexington, South Carolina, using four (4) men from 9:30 A. M. to 3:30 P. M., was employed to reset two 35 foot poles and do other necessary work in the relocation to a permanent location of the Signal Transmission Lines at or near Mile Post R-86 on the Columbia Division.

(b) Signal Maintainer J. L. Holsenback, Jr., be paid twenty-four (24) hours at the straight time rate for the work performed by Wingard Electric Company on April 9, 1965. (Carrier's File: SG-21514.)

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

On January 17, 1965, a derailment near Mile Post R-86.7 demolished two 35-foot poles in the Signal Transmission Lines. In order to restore the Signal System to service, the Signal Lines were relocated around and away from the wreck. (See dispute identified as NRAB-1648-Sou.) After the wreckage had been cleared away, the pole line was installed back to its original location. Carrier contracted out the work in connection therewith to Wingard Electric Company of Lexington, South Carolina.

Using four (4) men for six (6) hours each on April 9, 1965, the contractor reset two 35-foot poles and performed other work necessary to the relocation. A total of 24-man-hours was devoted to the project.

As a result of the obvious violation of the Scope of the effective Signalmen's Agreement, claim by Vice General Chairman G. F. Harper, on behalf of Signal Maintainer J. L. Holsenback, Jr. was presented to Signal and Electrical Superintendent L. C. Brown in a letter dated May 27, 1965, which has been reproduced and identified as Brotherhood's Exhibit No. 1. Subsequent corre-

demolishment of two 30 foot poles. Fairfield Electric Co-op restored the line through the woods around the derailment between 4:30 P. M. and 10:30 P. M. on January 18, 1965 and you are prosecuting a monetary claim on behalf of Messrs. Holsenback and Hensley in connection with that incident which involved an emergency. On April 9, 1965 Wingard Electric Company, Lexington, Kentucky, set two 35 foot poles and performed other electrical work in connection with installation of the electrical transmission line to its original location. The electric company dug the necessary pole holes and set the poles therein after which the high tension lines were moved to the new poles. This work could not have been performed by Mr. Holsenback. Furthermore he was employed on a full time basis and was not adversely affected in any manner whatsoever. Moreover I understand he is a 'protected employee' within the meaning of the agreement of April 16, 1965.

Claim being unsupported by the agreement and without basis, I confirm my previous declination of the same."

OPINION OF BOARD: This is a companion case to Award 16159 and the issue presented is basically the same, that is, the hiring of an outside, independent Contractor to do work which comes within the purview of the Scope Rule. We have rendered a decision in Award 15624 involving the same issues and the identical Scope Rule. We will abide by that decision and will accordingly sustain Claim (a) and for reasons outlined in the same award 15624, will 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 Employee 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 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