

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, 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) Carrier violated the current Signalmen's Agreement, as amended, when, on November 3, 1965, Fairfield Electric Company — using four (4) men having no seniority or any other contractual rights to perform Signal Work — was employed to raise the Signal Transmission Lines at or near Mile Post R-64.5. A total of sixteen (16) man-hours of work was consumed in the setting of four poles in the Signal Transmission Lines.

(b) Carrier be required to pay Signal Maintainer B. G. Stubblefield and T. B. Lindsay for sixteen (16) hours at their respective straight time rates on a prorated basis. (Carrier's File: SG-22861)

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

In connection with a project to raise the Signal Transmission Line at or near Mile Post R-64.5, Carrier contracted out a part of the work to Fairfield Electric Company of Winnsboro, South Carolina.

Using four (4) men for four (4) hours each on November 3, 1965, the contractor dug holes for and set four (4) new poles in the Signal Transmission Lines. Afterwards Signal Maintainers B. G. Stubblefield and T. B. Lindsay transferred both low and high tension Signal Wires from the old poles to the new, taller ones.

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 Maintainers Stubblefield and Lindsay was presented to Signal & Electrical Superintendent L. C. Brown in a letter, dated December 4, 1965, which has been reproduced and identified as Brotherhood's Exhibit No. 1.

On July 27, 1966 the Brotherhood's Vice General Chairman wrote Carrier's Director of Labor Relations as follows:

"Reference your letter of May 5, 1966, concerning claim involving contract work at Winnsboro, S. C. Your file SG-22861:

You state, 'As you know, the third paragraph of the Signalmen's agreement recognizes the Carrier's right to utilize employees of the IBoFEW line gang on Lines East to perform work of the type here involved. The scope rule of the agreement also recognizes carrier's right to contract work of this type. Thus by no stretch of one's imagination does the scope rule of the Signalmen's agreement confer upon signal employees monopolistic rights to performance of work of the type involved.'

No employe of the Lines East IBoFEW Line Gang was used and even if one had been used, in my opinion, it would have still been a violation of the Signalmen's agreement.

We certainly do not agree with your position and contention that the carrier had the right to contract this work out, as it is our contention that the scope rule permits signal work contracted out only when such contract is required by State or Federal law or regulations.

Furthermore, the scope rule specifically spells out that it is the intent of the agreement to bar the carrier from contracting out small jobs such as the work involved in this claim."

On August 22, 1966 Carrier's Director of Labor Relations replied as follows:

"Acknowledgment is made of your letter of July 27 concerning claim on behalf of Signal Maintainers B. G. Stubblefield and T. B. Lindsay for pay for 8 hours at their respective straight time rates in addition to pay for working on November 3, 1965 because certain work was performed that day between 8 A. M. and 12 noon by Fairfield Electric Co-op, Winnsboro, S. C. at or near mile post R-64.5.

There is no logical or other basis for your contention or for the interpretation which you here attempt to place upon the signalmen's agreement.

I again emphasize the uncontroverted fact that the claimants could not have performed the claimed work and that the impossible is not contemplated by any provision of the signalmen's agreement."

OPINION OF BOARD: These parties, the same agreement and the precise issue have been before this Board on several occasions. See Awards 11733 (Stark); 16335 (Friedman); and 15888 by the present referee. In each case, we held for Claimants who were contesting Carrier's use of contracting out pole setting just as in the instant docket.

We will sustain this claim on the foregoing authority and hold as we stated in 15888, supra, that ". . . our requiring Carrier to pay Claimants . . . is a consequence, not a penalty . . ." and in accord with ". . . the foundational concepts of collective bargaining."

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 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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1968.