

Award No. 17029
Docket No. SG-16861

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company.

On behalf of Mr. Wade Ralph for the amount of compensation that was paid or will be paid to a contractor — United Cylinders, 1419 St. George Avenue, Roselle, N.J. — for work in connection with repairs to pins, bushings, cranks and cylinders from the Hump Yard at Marion, Ohio, beginning on or about February 20, 1965.

[Carrier's File: 115.1-4 Item 119]

EMPLOYEES' STATEMENT OF FACTS: The Scope of the Signalmen's Agreement includes maintenance and repair, either in the Signal Shop or field, of electric or electro-pneumatic car retarder systems.

Our Statement of Claim refers to "repairs to pins, bushings, cranks and cylinders from the Hump Yard at Marion, Ohio" by a contractor — United Cylinders.

The "Hump Yard" is a car retarder system. The "pins, bushings, cranks and cylinders" are component parts of that system.

United Cylinders' employees hold no seniority or other rights under the Signalmen's Agreement. As a matter of information, that company placed the following ad on page 430 of the First Quarter 1966 issue of "The Pocket List of Railroad Officials, No. 285", published quarterly by "The Railway Equipment and Publication Company", 424 W. 33rd Street, 11th Floor, N. Y.

"UNITED CYLINDERS

Specialists in all kinds of cylinders and maintenance
of way equipment.

REBUILDING OF ALL TYPES OF —

AIR COMPRESSORS	PNEUMATIC HAMMERS
AIR JACKS	PISTONS
HYDRAULIC JACKS	GEARS

OPINION OF BOARD: It is the position of the Brotherhood that Carrier violated the Agreement, particularly the Scope Rule, when "it allowed United Cylinders to perform repair work on apparatus from the car retarder system at Marion, Ohio." On or about February 20, 1965, a Mr. Cooper, representing United Cylinders, drove into the Hump Yard at Marion and picked up pins, bushings, cranks and cylinders; the parts were later returned repaired, and United Cylinders billed Carrier for the work. Carrier, up to the time the record in the case was closed, had refused to pay United Cylinders, on the ground that it had not authorized United Cylinders to pick up and perform the repairs.

Carrier defends against the claim on the ground, among others, that it had never requested nor authorized United Cylinders to perform the work in question. According to the Division Engineer:

"This was purely a case where an outsider talked the maintainer into giving him the material by using the names of various officials of the railroad."

Aside from repeatedly asserting that Carrier was aware of and had authorized the contracting out of the work, Brotherhood supplied no evidence to establish that Carrier had contracted out the work, thus failed successfully to rebut Carrier's defense that it had neither authorized nor requested United Cylinders to do the work, and that it was not even aware that United Cylinders had performed the work until it was completed and Carrier was billed for it.

We will follow the principle laid down under similar circumstances in our Awards 9847, 10549, 12907 and 13803, and deny 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 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 26th day of March, 1969.

DISSENT TO AWARD NO. 17029, DOCKET NO. SG-16861

Assuming, without conceding, that the Carrier's defense was not sufficiently rebutted, we must observe that the record does not establish that the Carrier was especially displeased with the "contractor's" tactics. Additionally, the Awards cited are distinguishable in that they involve instances in which employees performed voluntary, unauthorized services for which others then claimed compensation. The claimant here contacted his superior, and while we cannot say that the response he received was unequivocal, it was such that it could reasonably be interpreted to instruct the claimant to proceed as he did.

Award No. 17029 does not in our opinion give sufficient weight to the evidence presented by the employees, and we dissent.

W. W. Altus

**For Labor Members
4-10-69**