Award No. 19108
Docket No. SG-19044

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when, on June 19 and 20, and July 1, 1969, persons not covered by the Signalmen's Agreement — Contractor E. T. Reynolds and forces — were used to perform recognized signal work in connection with dismantling and loading of highway crossing signal at or near intersection of Kendrick Spur Track and U. S. Highways 301-441, north of Ocala, Florida.

(b) Carrier now pay Signal Maintainer F. A. Garrett seventy (70) hours at his overtime rate in addition to any pay which he has already received for June 19 and 20, and July 1, 1969, as a consequence of the violation. (Carrier's File: 15-63.)

EMPLOYES' STATEMENT OF FACTS: Several years prior to 1968, Carrier installed a set of highway crossing protection devices consisting of two (2) cantilever signals, at intersection of its Kendrick Spur track and U. S. Highway 301-441, located approximately three (3) miles north of Ocala, Florida, near Carrier's piggy-back track.

The signals were installed by Carrier's signal forces and thereafter maintained by the assignee to the position of Signal Maintainer with headquarters at Ocala, Florida, until use of the spur track was discontinued in 1968.

When the signals were no longer needed at that location, the signal maintainer made the appropriate circuit changes to render the signals inoperative, and thus discontinue them from service.

On June 19, 20 and July 1, (Carrier says June 30, not July 1) 1969, Seaboard Coast Line Railroad Company employed a contractor — E. T. Reynolds and forces — to dismantle the signals and transport them to Carrier's Signal Shop at Ocala, Florida, and load same into a railroad car placed there by the Carrier.

The Carrier shipped the signals to Tampa, Florida, for installation in its signal system in that area.

The picture you enclosed of the shop crane does not lend any support to your claim, as it was established in the record that there was such a crane assigned to the Ocala Shop.

As to your reference to the crane having been used at the piggy back track, attached is statement of Mr. L. J. Mears, Signal Shops Supervisor, outlining the occasion and circumstances when the crane was moved to the piggy back (TOFC) ramp for loading on flat car.

The record establishes that the Carrier did not have the necessary trucks to handle the heavy dismantled equipment.

Also, as set forth in the record, there is no way this could be classified as signal work belonging to Signal Maintainer Garret and no justification for penalty payment claimed of 70 overtime hours."

NOTE: Statement of Signal Shops Supervisor Mears as referred to above is attached as Carrier's Exhibit "A."

(Exhibits not reproduced.)

OPINION OF BOARD: Beginning on June 19, 1969, an outside party under contract from the Carrier performed certain work in connection with the relocation of a highway crossing signal from a track near Ocala, Florida, on which the Carrier had discontinued operations to a location at or near Tampa. All work in this connection, not performed by the contractor, was performed by the Carrier's forces under the confronting Agreement.

It is the position of the Employes that the work in dispute is reserved to them by the confronting Agreement and the practice of the parties.

The Carrier's defense does not categorically deny the position of the Employes, but relies, instead, on an alleged lack of equipment capable of performing the disputed work.

We do not find the Carrier's argument, based on this record, to be persuasive. We must find that the Agreement was violated.

The Claimant seeks payment in the amount of 70 hours at his overtime rate. In handling on the property, the Carrier's Superintendent Communications and Signals acknowledged that the Contractor's forces had performed 25 hours of labor, and we do not find that the Employes have shown that figure to be in error. It was argued on behalf of the Carrier that the award, if the claim is sustained, should be at the straight time rate, but that issue was not raised by the Carrier in handling on the property and is not resolved here. We must therefore sustain the claim reducing the claimed 70 hours to 25.

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 Employes 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.

AWARD

Claim sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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