

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19706
Docket Number SG-19388

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Clinchfield Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad Company that:

(a) Carrier has ignored and continues to ignore the Signalmen's Agreement, particularly the Scope, when, commencing on or about March 9, 1970, it contracted out pole line installation (setting poles, stringing signal wires) at Haysi, Virginia.

(b) Carrier should be required to compensate signal employees as follows:

Foreman J. R. Wiggs8 hours time-and-one-half rate at \$6.0863 for below listed days, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added as long as violation exists.

Leading SC&E Man P. E. Booher, Jr., 8 hours each day at \$5.8232, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

Leading SC&E Man Raymond Wilson ... 8 hours each day at \$5.8232, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Man Harry B. Sykes8 hours each day at \$5.7177, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Man J. E. Richards8 hours each day at \$5.7177, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Assistant I. Buchanan8 hours each day at \$5.0669, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Helper D. R. Pierson8 hours each day at \$4.7334, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

SC&E Helper R. E. Treadway ...8 hours each day at \$4.7334, March 9, 10, 11, 12, 13, 17, 18, 19, 20, 1970, and others to be added.

OPINION OF BOARD: The claim alleges a diversion of Scope covered work in connection with the construction of a six-mile signal pole line beginning at Haysi Junction, Virginia.

The Organization contends that the property in dispute is a part of the Clinchfield Railroad; the Carrier denies that contention, stating that the Haysi Railroad Company is a separate corporate entity and separately recognized carrier. The Petitioner has presented no evidence of probative value to sustain its contention, and we must therefore treat the Haysi Railroad as a corporation and carrier separate from the respondent Carrier. It appears from the record that the Haysi Railroad Company contracted out pole line construction and installation work.

In Award No. 19369 we said:

"Numerous disputes have been before the Board where two or more rail Carriers have found it necessary and desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed. It has been consistently held that the work to be performed under such circumstances falls to the Carrier and its employees who by reason of such Agreements between the Carriers, have the superior right or contractual duty to perform it. See Awards 11002, 6210, 3450, among others. Applying this principle to our present dispute, so long as the C & O, by reason of its contract with the Wabash (now N & W) had a right to construct and maintain the interlocking facility, then such signal work belonged to C & O signal employees. However, when the two Carriers proceeded in a lawful and regular manner to change the Agreement between them to provide that each would install, operate and maintain the necessary signal facilities on its own properties and right of way, the rights of C&O signal employees to install and maintain signal facilities on the Wabash (now N & W) ceased as the Scope Rule cannot extend to work that does not belong to the Carrier, but only applies to work that the Carrier has to offer (Award 13056)."

The Petitioner has not shown that Carrier had control over the work in dispute or that it was for Carrier's operations. Hence, it was not covered by the Agreement, and we must dismiss the claim.

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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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1973.