NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20202
Docket Number SG-19834

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, Hours of Service, Seniority, Bulletining and Assignment Rules, when, beginning on or about November 15, 1970, at Pontiac, Michigan, Carrier arranged for and/or otherwise permitted a contractor (WABCO) and its forces to perform signal work in connection with installing power switch machines; assembled and wired searchlight signals on signal bridges, installed gate mechanisms on existing flashlight signals at Florence and Sanderson Streets, Pontiac, Michigan; installed case piers, and mounted several factory wired relay cases at various locations, and did other work normally performed by Signal Department forces.

(b) Carrier should now be required to compensate the following signal employes and/or their successors on their territories at their respective overtime rates of pay, on a proportionate basis, for all time spent by the Contractor and his forces on this work. This is to begin sixty (60) days prior to the date of this letter, and to continue as long as the Contractor works on this project, and to be in addition to any other compensation Carrier paid to these employes for the period in question:

W. E. Cooney	- Foreman
E. E. Smith	- Leading Signalman
J. R. Devroye	- Signalman
K. L. Wingate	- Signalman
C. H. Fowler	- Signalman
C. M. Hanton	- Asst. Signalman
R. D. Schneider	- Asst. Signalman
D. A. Neff	- Helper
R. Farr	- Signal Maintainer
J. A. Karwoski	- Helper

(Carrier's File: 8390-1(27))

OPINION OF BOARD: The essential facts involved in this dispute are not in issue. On or about December 1, 1970, employees of an outside contractor, WABCO, commenced work on Carrier's property of installing a Centralized Traffic Control (C.T.C.) system to replace the existing automatic block signal system. The new traffic control system was to be installed between Mile Posts 23.9 and 66.5 on Carrier's Holly Subdivision with the main terminal located at Pontiac, Michigan. On January 22, 1971 Petitioner initiated the instant claim on behalf of ten claimants comprising the Detroit Division Floating Gang; contending that Carrier's use of WABCO for C.T.C. installation at Pontiac violated the Scope and other rules of the Agreement between the parties. The Scope rule reads as follows:

> "This Agreement covers rates of pay, hours of service and working conditions of all employees specified in Article I engaged in the installation and maintenance of signal apparatus and performing work generally recognized as signal work."

Carrier does not deny that the work in question is covered by the Scope rule but posits inter alia, that (a) It was under the impression that the Organization had acquiesced in April 1969 to its proposed subcontracting of the C.T.C. work (b) The Carrier has the right to contract out work involving considerable undertaking of great magnitude where its own forces do not have the capacity to perform said undertaking.

As to Carrier's belief that Petitioner, on the basis of an April 1969 discussion of the C.T.C. project, concurred in the subcontracting decision, the record before us shows no such understanding. Indeed the record indicated a misunderstanding by Carrier of Petitioners position prior to the contracting out; and, subsequent to the contracting out, efforts by Carrier to reach a formal ex post facto agreement with Petitioner regarding the import and effect of the contracting out upon the Detroit Division Floating Gang. Accordingly, irrespective of Carrier's good-faith misunderstanding and efforts to achieve agreement, we find that Petitioner did not acquiesce in the contracting out.

Carrier further contends that it had the right to contract out the work in question because it could not have performed the C.T.C. installation work at Pontiac with its existing forces without incurring an unreasonable amount of overtime and requiring its Floating Gang signal forces to work such amounts of overtime as to impede seriously their efficiency and safety. Carrier asserts that Awards of this Division

permit contracting out in such situations. Carrier is thus raising an affirmative defense and the burden is upon Carrier to prove such defense by competent evidence on the record.

The uncontroverted record shows that the project in question took over nine months to complete during which contractor's forces worked some 18,500 straight time hours. Petitioner does not deny that claimants were otherwise occupied during this period, but asserts that Carrier should have added four men to the Floating Gang and worked the Gang two hours overtime each day Monday through Friday as well as 9 hours overtime each Saturday and Sunday until the project was completed. Such a schedule would have required each member of the Floating Gang to work 68 hours per week (seven days per week - 5 days of 10 hours and 2 days of 9 hours) for some nine months. In these circumstances we are guided by the countervailing principles enunciated by this Division in Award 3251, quoted with approval in Award 9675:

> "Where work is within the scope of a collective agreement and not within any exception contained in that agreement or any exception recognized as inherently existent as hereinbefore discussed, we feel obliged to adhere to the fundamental rule that the work belongs to the employes under the agreement and that it may not be farmed out with impunity..../However/ we think that it would be unreasonable for the Organization to insist that work of great magnitude be performed on overtime where it could bring about serious complications in the efficient performance of the work or require excessive overtime hours..."

This is not a case where Carrier has sought to abrogate the Agreement by arbitrarily and unreasonably contracting out work to persons outside the Agreement without notice or discussion with affected employees. Moreover, the record before us supports Carrier's contention that this was an undertaking of considerable magnitude not reasonably susceptible of performance on an overtime basis. In these circumstances we find no violation of contract committments. Accordingly, the claims are denied.

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

The Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1974.

Dissent to Award 20202, Docket SG-19834

The Majority has once again written into the Agreement of the parties an exception which they did not enter during their negotiation. Award 20202 and any others in which such re-writing of Agreements is undertaken fly squarely into the face of our accepted rule that this Board will not do so.

Award 20202 is in error and I dissent.

W. W. Altus, Jr.
Labor Member