NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20540
THIRD DIVISION Docket Number SG-20249

David E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

Carrier should pay the following named members of Signal Gang 319 an additional payment of twenty-five (25) hours each at time and one-half their respective straight time hourly rates, account signal work denied them and assigned to an outside contractor in October 1971 in violation of the Scope and Rule 62 of the Signalmen's Agreement.

W. A. Sullivent	Foreman	$922.70 per month
P. W. Bardwell	Signalman	4.28 per hour
F. D. Randolph	Assistant	3.72 per hour
C. R. Beaubouef	Assistant	3.55 per hour
C. D. Bennett	Assistant	3.55 per hour
T. L. Bourgeois	Assistant	3.51 per hour

(Carrier's File: B 315-49 General Chairman's File: 141)

OPINION OF BOARD: This claim demands 25 hours for each of six named Claimants because an employe of a subcontractor, Summers Brothers, Inc., performed ten hours work moving earth and laying conduit in the installation of a highway crossing signal on Carrier's tracks near Grosse Tete, Louisiana. The employees assert that this constituted a violation of the Scope Rule and Rule 62 of the applicable Agreement.

The Scope Rule of the controlling Agreement reserved the work of installing highway crossing protective devices to the Carrier's employees covered by the Agreement, including Claimants. Hence, the performance of such work by others is violative of that Agreement.

Carrier's position, as summarized in its Rebuttal Statement to our Board, is as follows: The movement of large quantities of earth and the placement of conduit need not be performed by hand labor; the use of a special piece of earth-moving equipment to perform the work here in question is work which, if performed by railroad forces, would be assigned to Maintenance of Way employes; and the outside contractor was directed only to report for specific instructions to the Claimant Foreman (in effect this latter point amounts to a defense of entrapment).

We quite agree with Carrier that hand labor need not be used to the exclusion of machinery. This approach, however, begs the basic question herein concerning what human labor was in fact used. Where, as here, the hands on the controls of a machine produce the same end results as hands on a shovel would have produced, viz installation of highway crossing signals, this work remains under the Scope of the Agreement.

We do not accept the contention that the work in question would necessarily be assigned to Maintenance of Way employes, if performed by railroad forces. The moving of earth, per se, is not exclusive to any craft, nor is the use or operation of any tool.

We have noted Carrier's contention before our Board that in several instances in recent years similar work has been similarly performed at other places. The instances cited, however, differ from those raised during handling on the property and are therefore not properly before us. Similarly, Carrier's entrapment defense was not placed in issue on the property and when raised for the first time before us, comes too late.

On all of the facts and circumstance herein we find that based on the facts peculiar to this record the claim must be sustained. However, the record of handling on the property and Petitioner's rebuttal statement shows that the labor involved amounted to ten (10) man hours. Accordingly, we will allow Claimant's ten (10) hours pay in the aggregate at the Signalmen's rate.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.