NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21021
THIRD DIVISION Docket Number SG-20744

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(George P. Baker, Robert W. Blanchette, and
(Richard C. Bond, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company:

SYSTEM DOCKET NO. 703
Chesapeake Division - Claim No. 18/1169, 18/1169A

We hereby present the following claim in behalf of A. D. Colaianni, H. E. Engler, M. L. Bohlayer, C. E. Walker, K. E. Dubbs, S. C. Ensminger, Buster Harrel, K. E. Bailey, A. M. Wilson, C. A. Wolf and C. W. Boyer, starting time 7:30 A.M. to 4:00 P.M. Sat.and Sun. relief days;-

Claim that Company on October 7 and 8, 1969 at Padonia, Md., involving the setting of 7 poles, digging pole holes and guide arms and replacing of new wire, violated the Scope of the Agreement, also Article 2, Section 23(h) when it allowed other than regular assigned employees to do this work. The Company hired three (3) contractors and the equipment to dig and set poles and guides.

Claim that the employees mentioned above be paid eight (8) hours for October 7 and 8, 1969 at the overtime rate of pay account of violations cited.

OPINION OF BOARD: The basic aspect of the claim is that Carrier violated the Scope Rule of the Agreement when it allowed outside contractors to do the work of "setting 7 poles, digging pole holes and guide arms and replacing of new wire" at Padonia, Maryland, on October 7 and 8, 1969. Payment is demanded in behalf of eleven Claimants for eight hours pay for two days at overtime rate for "Sat. and Sun. relief days". Initially, two claims were presented; all facts and dates were identical but with different employes. These have now been combined into one claim and are so considered at this level of appeal.

The nature of the disputed work as described in the claim is not precisely correct. The exact work involved was the digging of pole holes and the setting of the poles into the prepared holes. It does not appear to be disputed that all subsequent work and the actual stringing of wire was performed by covered employes.

We have carefully reviewed the precise and specific language of the confronting Scope Rule. We find no language therein incorporating within its coverage the work of digging pole holes and setting the poles into the holes. Nor is it persuasive to contend, as does Petitioner, that the disputed work is "included" because it is not mentioned under the "Exceptions". These "Exceptions" apply to specific situations unrelated to the precise coverage of work under the Scope Rule proper. They afford Petitioner no substitute for proof that the disputed work is in fact covered by the Scope. Such proof is absent in this record.

Petitioner seeks recourse in that portion of the Scope Rule which reads "and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work . . ." (Emphasis added). But the phrase "that has been recognized" is clearly general in nature and open to contention, as has been evident in many prior disputes, and inclusion of the disputed work must be established affirmatively.

See Awards 14291 (Rambo), 18158 (Devine), 20157 (Lieberman) and 20543 (Eischen), in which precisely the same language was involved.

Moreover, we have held, absent an "exclusive work reservation rule", that such language in the Scope Rule, being general in nature, the burden of proof is on Petitioner to establish by substantial probative evidence that the employes it represents have performed such work historically, traditionally and exclusively, and system-wide.

See Awards 10389 (Dugan), 13579 (Wolf), 15383 (Ives), 15539 (McGovern), 16609 (Devine), 17706 (Yagoda), 18471 (O'Brien), 18935 (Cull), 19576 and 20242 (Lieberman), 19604 (Ritter) and 19969 (Roadley), among a host of others.

The record indicates that Petitioner has failed to sustain the required burden of proof and has failed probatively to support the cited and well established principle of "exclusivity". Hence, the Agreement was not violated when Carrier elected to have the disputed work performed by outside contractors.

In view of the foregoing, therefore, and to the extent indicated above, we concur in the findings and conclusions of Award 17960 (McGovern), involving the same principals, the same Scope Rule, and a similar, if not identical, factual situation.

To the same effect, albeit on varying factual situations, on the principle of certain disputed work held not covered by the specific language of the same Scope Rule on account not specifically mentioned therein, see Awards 4662, 8001, 11421, 12023, 12510, 12664, 13703, 13801 and 14026.

We do not quarrel with the principles urged by Petitioner and supported by precedent that "Carrier may not let out to others the performance of work contained within the scope of its collective bargaining Agreement with its employes", or that "work once reserved to employes under the Agreement cannot unilaterally be removed therefrom."

The gravamen of this position, however, is the fact, not merely conclusory allegations, that the disputed work is "contained within" the Scope of the Agreement, or that it has been exclusively reserved to the Claimants' category. Such fact has not been established in the record before us.

Petitioner refers us to Awards 11142, 11451 and 20559, which are not germane to the dispute before us. In each of these cases the issue related to "contracting out of digging of trenches for underground signal cables and holes for signal foundations". Such issue is not before us. Moreover, each of these cases involved factors not present in the confronting dispute.

Award 11733, cited by Petitioner, appears to be in point, but there too the factual situation and the disputed work were dissimilar from the present dispute. The latter case involved installation of a new spur track, necessitating "the raising of transmission lines" and requiring the removal of three poles and replacing them with longer ones. Obviously, this involved "maintenance and repair" of interrelated signal equipment. This is not the situation that confronts us here.

In Award 9749, also cited by Petitioner, the work involved was the "resetting of a crossing signal" in which a wrecker crane of an outside contractor was used. This is not the case before us.

Award 16335 also related to work involving "raising of transmission lines" (as did Award 11733) in connection with "installation of a new turnout". This involved digging the pole holes and setting the poles. The exact basis upon which the claim was sustained is not indicated, except that reliance is placed on Award 11733 (previously differentiated) and Award 15888.

In Award 15888, the disputed work was performed by an outside contractor who used "a power equipped truck on which was mounted an earth auger for drilling pole holes and a boom with winch for lifting and handling" three 65 foot long poles which were set into the holes. It was not disputed that Carrier did not have the necessary heavy duty machines or equipment to do this work. Moreover, the Claimants were on duty while the work was performed, stood idly by, and then performed the necessary line transfers and attachments. No monetary loss was established as to Claimants. Nevertheless, the claim was sustained by a "pro rata" award. Additionally, there was no specific finding as to the basis upon which the disputed work was held covered by the Scope Rule.

We do not concur, therefore, in the findings and conclusions of Award 15888, either on the merits or on the sustaining monetary award.

We conclude and find, therefore, that the disputed work is not covered by the specific language of the Scope Rule; that it is not covered under the "Exceptions" by implication; and that it is not covered by the general language of the Scope Rule since "exclusivity" has not been probatively established.

Accordingly, we are compelled to deny the claim.

Parenthetically, Petitioner complains of the inordinate delay by Carrier in effectuating the Joint Submission, and urges that this aspect should be considered by the Board "in rendering a decision." Obviously, our decision must be based on the Agreement, pertinent controlling principles, and the substantive merits of the dispute before us. As to the delay, we can only suggest that Petitioner could have elected to proceed unilaterally.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.