

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21112
Docket Number SG-21088

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(The Western Pacific Railroad Company

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

(a) The Western Pacific Railroad Company violated the agreement between the company and its employees represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949 (reprinted July 1, 1961) including revisions and particularly the Scope rule, by diverting long recognized signal work to others who hold no seniority or any other rights under the current Signalmen's Agreement.

(b) The employees named below be compensated for eight (8) hours each at their respective pro rata rate account signal work diverted to A. Teichert & Sons Inc. as of date of claim: /date of initial claim -- Nov. 29, 1973/

Foreman: W. J. Walker
Signalmen: J. W. Hendricks, D. R. Tribble, M. S. Bausch,
M. D. Schooler and D. B. Gifford
Leading Relay Repairman: L. W. Howard

/Carrier file: Case No. 9683-1974-BRS/

OPINION OF BOARD: It is asserted that Carrier utilized outside employees to construct concrete foundations for use in its signal system, in violation of the Scope Rule:

"This Agreement covers the rates of pay, hours of service and working conditions of all employees engaged in the construction, reconstruction, installation, repair, reconditioning, inspecting, testing and maintenance, either in signal shops or in the field, of any and all signal systems, car retarders and/or interlocking systems, detector devices connected with signal systems, including all apparatus and devices in connection therewith, and such other work as is generally recognized as signal work."

Both on the property, and before this Board, the Carrier has asserted that the facts show that concrete products have been purchased from

outside sources for many years. It also urges that Signalmen have no exclusive rights to the type of work here under consideration.

The Board is of the view that, in order to prevail under the Scope Rule at issue, the employees have a burden of showing that they have acquired the exclusive right to perform the work. We are unable to conclude that the employees have made such a showing under this record.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.