

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22031
Docket Number SG-21993

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

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

On behalf of Signal Foreman R. H. Hogan, Signalmen J. Blevins, R. W. Shults, M. Palmer, and Assistant Signalmen G. D. Miller, M. Brantly, and all furloughed signal employees at the time of claim, for fifteen days' pay at the time and one-half rate, account outside contractor used to dig holes and set poles to relocate a signal and communications pole line from Riely Lake to Flinton, Illinois, approximately five miles, during the months of July and/or August 1975, while at such time Signal Gang #1800 was working in the vicinity.

[Carrier file: K 225-686 cc: 247-5219]

OPINION OF BOARD: It appears that it was necessary to relocate certain of the Carrier's facilities and right-of-way between Riely Lake and Flinton, Illinois. The project included relocating a pole line which contained 17 wires in Carrier's signal service and six wires in its communication service. Carrier contracted out the digging of the pole holes and the setting of the poles necessary to the five mile relocation. It is noted that all other work pertaining to communication and signal wires, power lines and appurtenances was performed by Carrier's employees. Petitioner claims that the digging of the holes and the setting of the poles should have been assigned to Claimants.

In the handling on the property the Petitioner cited the Scope Rule of the parties' schedule Agreement and their Memorandum of Agreement effective September 1, 1968 and contended that the Carrier's contracting the "work of digging the holes and setting the poles" constituted a violation of these Agreements. The Carrier responded that: "There is no rule in the agreement which assigns construction of communication pole lines exclusively to signal employees...."

From the entire record, and the handling on the property, it appears that the work of digging holes and setting the poles is the only work in dispute. The two agreements cited by Petitioner cover two different classes of work: one covers signals and signal systems and the other covers "communication pole lines, wires and appurtenances". Consequently, we must find that the pole line was a signal pole line with communication wires added in order to apply the signal agreement; or we must find that it was a communication pole line with signal wires added in order to apply the communication pole line agreement. It cannot be found both ways; only one agreement can be applied. The burden for showing the essential facts in this dispute, as in any such matter, rests with Petitioner. During the handling on the property, Petitioner stated: "The pole line in question carries 17 Signal Wires and 6 Communication Wires so it appears to be more a Signal Line than a Communication Line...." Thus, it is clear that Petitioner did not show, in the handling on the property, the requisite facts to support its contentions.

The Claim must be dismissed for lack of supporting facts.

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

Petitioner failed to sustain its burden of proof.

A W A R D

Claim dismissed.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.