

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24538
Docket Number SG-24434

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of Foreman G. E. Roberts, Signalmen G. A. Peets, J. K. Smith, A. C. Thompson and J. B. Walker, Signal Gang 0010, account the company did not use the gang to perform work at various streets in Brookhaven, Mississippi (the company paid Deviney Construction Company \$1,716.50 to dig under or through these streets.)" (Carrier file: 135-241-208 Case No. 370 Sig.)

OPINION OF BOARD: This is a claim in reference to certain under-street boring work involved in installation of railroad warning systems which the Carrier assigned to a subcontractor instead of employees represented by the Organization. The Organization claims that this work should have been assigned to employees it represents, based on provisions of the Scope Rule which reads in pertinent part as follows:

"Rule 1

SCOPE

This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department (except supervisory forces above the rank of Inspector, clerical forces and engineering forces) performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling, inspection, testing and maintenance, either in signal shops or in the field, or the following: ...

(a) All signals and signaling systems, traffic and C.T.C. control systems; interlocking plants and interlocking systems; train stop and train control equipment and devices, except that on rolling stock; car retarders and car retarder systems; high-way crossing warning devices and their appurtenances; ...

(e) Welding, carpentry, painting, concrete, form, excavating and back filling work, including the operation of machines, used in connection with installing, repairing, or maintaining any system or equipment covered by this agreement, but does not include such work in connection with the erection and maintenance of structural metal cantilever and signal bridges, interlocking towers, or signal shop buildings. ...

(h) No employee or person other than those covered by this agreement shall be permitted or required to perform any work covered by this agreement."

The Organization also relies on Rule 39, which reads as follows:

"TOOLS

The Company will furnish the employees such tools, except pocket tools (pliers, screwdrivers, rulers, pocket-knives), and equipment as is necessary to perform their work."

The Organization may not be faulted for claiming violation of the Scope Rule where work performed by others is unambiguously specified therein. The Carrier, however, argues that the subcontracted work could not be performed with equipment available to the Carrier and that the work of "boring" is not among those tasks specified in the Scope Rule.

The Carrier argued without contradiction that the boring work in question required the use of four and six-inch pipe under the streets, but that the Signal Department "did not have the facilities to push pipe larger than two inches in diameter". Larger pipe, again according to uncontradicted Carrier statement, requires "specialized equipment ... including a two-inch water pump and an air compressor with a jack hammer".

In response to this, the Organization relied on Rule 39 which provides that "The company will furnish the employees such ... equipment as is necessary to perform their work (emphasis added)."

The Board does not agree that Rule 39 requires the Carrier to obtain equipment for larger-size borings. "Boring" work is not one of the many activities specified in the Scope Rule. The Carrier cites six previous instances in which similar subcontracting was undertaken, without subsequent dispute. The Board concurs with the Organization that "the agreement is superior to practice". To repeat, however, the "agreement" in this case -- while otherwise quite precise -- makes no reference to the specific task of "boring".

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 Employee 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

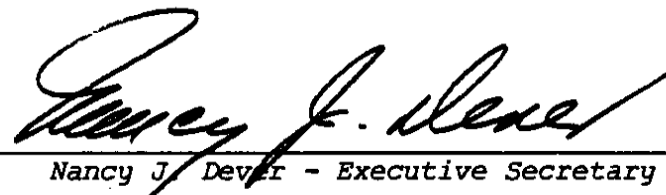
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.