

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24615
Docket Number SG-24253

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Central of Georgia Railway Company

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

Claim No. 1

Claim on behalf of Signal Foreman J. B. Dumas; Leading Signalman F. F. Jones; Signalmen J. L. Taylor, M. E. Glenn, W. E. Windham, C. R. Johnson; and Assistant Signalmen S. M. Marshall and G. E. Burns for eight (8) hours each at their respective overtime rates of pay for April 22 and 23, 1980 when the Carrier permitted employees not covered by the Signalmen's Agreement to install conduit for signal cable in violation of the Scope Rule. [General Chairman file: CG-55. Carrier file: SG-456]

Claim No. 2

Claim on behalf of Signal Foreman J. B. Dumas; Leading Signalman F. F. Jones; Signalmen J. L. Taylor, W. E. Windham, C. R. Johnson, S. D. Marshall; and Assistant Signalmen G. M. Burns and T. L. Ricks for twenty (20) hours each at their respective overtime rates of pay for May 27 and May 28, 1980 when the Carrier permitted employees of Mike Hunter Road Building Contractor to install signal cable conduits at Travis Field Road, Savannah, Georgia, in violation of the Scope Rule of the Signalmen's Agreement. [General Chairman file: CG-56. Carrier file: SG-457]

Claim No. 3

Claim on behalf of Signal Foreman J. B. Dumas; Leading Signalman F. F. Jones; Signalmen J. L. Taylor, M. E. Glenn, C. R. Johnson, T. L. Ricks and T. G. Huguley for twenty (20) hours each at their respective overtime rates of pay for September 9 and 10, 1980 when the Carrier permitted employees not covered by the Signalmen's Agreement to install signal cable conduits at Bay St. in Savannah, Georgia in violation of the Scope Rule. [General Chairman file: CG-62. Carrier file: SG-484]

OPINION OF BOARD: These three claims, consolidated before the Board, assert that the Carrier violated the Scope Rule of the Signalmen's Agreement when outside employees installed signal cable conduits under the road at each of three crossing signal locations.

An outside contractor hired by the State of Georgia installed the conduits in the course of its work in connection with a State highway construction and resurfacing project. The Carrier was under contract with the State to install the grade crossing systems at those locations. After the conduits were in place, the Carrier's signal employes came on to the locations and performed all phases of the work from digging the holes for the foundations to installing all electrical cable and making all electrical connections.

The Carrier denies any violation on its part of the Scope Rule. Relying on established principles of this Board, it argues that it had no control or dominion over the work in dispute. It notes that the work was performed for the State by a third party - selected, directed and paid by the State and subject to the complete control of the State. It stresses, and has produced documentary evidence to show, that the State acted independently under a State policy of installing signal conduits in the course of highway construction as a means of avoiding later damage to the road. For its part, the Carrier adds, it gave its own employes all the signal work within its control.

The Organization does not disagree that the applicable test for determining Carrier responsibility under the Scope Rule is whether the Carrier had dominion and control over the work in claim. The Organization does not dispute that the third party contractor may have been hired and paid by the State, but it does not consider those facts to be conclusive. It contends that the Carrier has failed to clear itself of responsibility by showing, that it did not, or could not, have any effective role in the State's action. It suggests, by way of assumption, that the Carrier must have had the capacity to influence State action on behalf of the Carrier's signal employes but that it failed to do so for improper motives or other unacceptable reasons.

Upon careful analysis of the entire record, the Board concludes that the claims are not supported by substantial acceptable evidence of a probative nature. The simple and only fact relied on by the Organization that at a particular signal location an outside employe performed particular work of a kind generally characterized in the Scope Rule as "installation of -- conduit", is not in itself sufficient on this record to sustain the claims.

It is true that the Carrier, in response, has not submitted direct documentary proof of the nature of its contractual arrangement with the State. It has, however, produced rational and seemingly reliable evidence to support its position that it did not have effective control over the State's action. We cannot reject that evidence in view of the absence from this record of good and sufficient reason to do so. The Organization has produced no convincing evidence to support what must be regarded as no more than speculative assertions by it having no reasonable basis in the record. The claims will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.