NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24833
Docket Number SG-24779

THIRD DIVISION

Robert Silagi, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Kentucky & Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kentucky & Indiana Terminal Railroad Company

On behalf of signal employees P. H. Hoerni, J. A. Schoch, J. W. Pruitt, W. F. Johnston, E. D. Johnson and T. E. Katchen for 320 man hours they were denied when the Carrier farmed out the installation of a crossing signal at Virginia Avenue to TESCO (Transportation Engineering Services Company), beginning on or about June 30, 1981. [General Chairman file: KI-5. Carrier file: 9-6-0-31]

OPINION OF BOARD: The central issue to be decided in this case is whether the Carrier may subscontract work when the agreement rules are silent on the subject although they do reserve to the Brotherhood the work performed by the contractor.

The applicable rules are:

"RULE 1

Scope

This agreement covers the rates of pay, hours of service and working conditions of employes enumerated in Rule 2 engaged in the installation, construction, repair, reconditioning, inspecting, testing and maintenance, either in the signal shops or in the field, of the following:

(a) Electric, electro-pneumatic, pneumatic, electro-mechanical or mechanical interlocking systems; semaphone, color light, position light or color position light signals and signaling systems; electric, electro-pneumatic, pneumatic, mechanically operated signals and signaling systems; car retarder systems; centralized traffic control systems; wayside automatic train controlling or stopping devices; track bonding; highway crossing protective devices; all communication equipment and appurtenances owned and operated by the Kentucky & Indiana Terminal Railroad Company, except the pneumatic tube system.

(j) All work generally recognized as Signal Work.

(k) Employes covered by this Agreement will not be expected to perform the work of any other craft nor will employes of any other craft be permitted to perform work coming within the Scope of this Agreement.

RULE 2

Classification

It is understood the following classification shall include all employes of the Signal Department performing the work described under the hearing of Scope."

Under Rule 2 there are listed the following job classification: (a) Foreman, (b) Leading Signalman,(c) Signalman - Signal Maintainer, (d) Assistant Signalman - Assistant Signal Maintainer, and (e) Signal Helpers. The respective duties of the classification are omitted since they are not relevant to this dispute.

The underlying facts are not disputed. The Carrier retained TESCO, to install a new crossing protection system at Virginia Avenue in Louisville, Kentucky. The contractor began work on June 30, 1981 with four men who worked a 10 hour shift for 9 days. On July 21, 1980 TESCO returned to the job site and worked 2 men each 4 hours. The Carrier does not deny that the installation and construction of highway crossing protective devices is work which comes within the purview of Rule 1(a). The Carrier asserts the following defenses which will be discussed below:

The Carrier alleges that the claim contained in the notice to the Carrier by the Brotherhood of its intention to file an ex parte submission is materially different from the one progressed on the property. In this connection the Carrier states that the claim submitted to this Board omits the Brotherhood's formula of equal distribution to the named claimants; that it omits the demand for overtime pay and the distinction between the rate of pay for a signalman and a signal helper. Such modification of the claim, it is asserted, constitutes a penalty against the Carrier to obtain a windfall on behalf of six signalmen of different rank.

The Brotherhood argues that the claim on the property was for pay for the time that TESCO employees worked on the installation of the crossing protection devices. This Board has held that a claim need not be identical at every level of handling so long as the subject matter is the same throughout its handling, citing Awards Nos. 20841; 20754 and others. An examination of the correspondence exchanged on the property shows that the Carrier had no difficulty in identifying and dealing with this aspect of the claim at all levels. At no time was the Carrier misled, consequently we find no merit to this defense.

The Carrier alleges that it consistently subcontracted work with the knowledge and implied consent of the Brotherhood. A letter dated November 21, 1979, from the Carrier to the Brotherhood, written in connection with an earlier dispute, was submitted by the Carrier to support its current position. Said letter enumerates instances of subcontracting work such as motors, other than routine maintenance, and interlocking relays. Significantly, said letter refers to contracting work which the Carrier's signal forces cannot perform. There is no contention, however, that Carrier's signal forces lacked special skills to install the crossing protection system or that special equipment or materials were required, or that the installation of this system constituted work unusual, novel in character or that it involved a considerable undertaking. Rule 1(a) specifically reserves to signalmen the installation and construction of highway crossing protective devices. The record in this case does not show that the Carrier previously contracted out any highway crossing protective device, nor does it reveal that the system installed at Virginia Avenue was unique in any way.

The Brotherhood maintains that subcontracting was authorized only in very limited circumstances and by written agreement, e.g.,"work of installing antennas, cables, conduits, wires, and motor alternators on engines of the Company may be done by employes other than those covered by the Signalmen's Agreement". (Letter dated January 26, 1956, from the Brotherhood to the Carrier and accepted by the latter). Likewise the parties agreed that motors may be rewound by contractors. (Memorandum dated January 25, 1956).

The Agreement does not prohibit contracting in so many words, indeed it is silent on the subject. Rule 33 - Verbal Agreement and Interpretations, states that general rulings and interpretations of the Agreement are not binding except if agreed to by the parties and reduced to writing. If such writings exist which allow contracting, except as noted above, they are not part of this record. We are therefore convinced that the Agreement supercedes a practice of contracting work on highway crossing protection devices if, in fact, there is such a practice (Awards 4534, 9545, 11031, 12958 and 14090). Where the agreement contains language such as Rule 1(a) which is specific and unambiguous, then practice is irrelevant, First Division Award 22083.

The Carrier relies heavily upon Award 24479 - Sickles, in fact so much so that it incorporated by reference the entire docket in that case into evidence in this proceeding. Award 24479 involved the same parties. In that case the Carrier arranged for a contractor to construct a new building, install new and sophisticated traffic control devices as well as replace an antiquated manual block system and to close four towers. The Brotherhood asserted that such work was covered by the Scope Rule of the Agreement. This Board held that the work performed was construction but not the construction of signals and systems described in Rule 1. Since the work was not within the scope of the Agreement as "normal signal-type" of work, the claim was denied. The record in Award 23379 shows that the construction work involved there was of much greater magnitude and of a different kind from the highway crossing protective device installed on Virginia Avenue. Accordingly, Award 24479 has no precedential value in a clear-cut instance of a single highway crossing system.

The real objection of the Carrier rests in its assertion that it is a class 3 switching system, very small in size, that it does not need a large complement of signalmen for routine work, that it is neither practical nor can it afford to maintain a large staff to take care of isolated jobs and that it is cheaper to subcontract such tasks. The economic argument is a powerful one but it is more properly raised at the bargaining table than before this Board which has no authority to revise the contract. Under all the circumstances we hold that the Carrier violated the Agreement by contracting out the highway crossing protection device.

The sole remaining issue is the remedy. The Carrier urges that no monetary relief be awarded to the Claimants because they were fully employed during the construction of the device, that they lost no pay, that they were unavailable to work on the Virginia Avenue crossing because they were prohibited from working by the Hours of Service Act, 43 USC § 61 et seq. Section 63a-Signal system employees' hours of service, limits an individual to 12 hours of continuous duty after which he must have at least 10 consecutive hours off duty. Section 63a does not prohibit overtime nor does it prevent an individual from working on his day of rest. Aside from bare assertion the Carrier failed to support its conclusion by showing the specific hours worked by the claimants. Under these circumstances we cannot hold that there would have been a violation of law had claimants worked on the Virginia Avenue crossing.

The Carrier further asserts that any pay would constitute a windfall to the claimants and a penalty upon the Carrier which this Board may not impose. The Brotherhood responds that a monetary award is made to vindicate the agreement regardless of whether the violation resulted in actual loss of pay, citing Award 9544. Second Division Award 6337 states:

> "A contract violation warrants a remedy appropriate to the circumstances of the case. Otherwise, the incentive to comply with a labor ageement is absent."

We shall, therefore, award compensation to the claimants for the loss of work opportunity, (Award 17108) even though claimants were working (Award 17059). The Brotherhood states, without contradiction, that TESCO employees worked 368 hours on the Virginia Avenue job yet the claim presented to this Board is for only 320 hours. The Carrier points out that one claimant is a signal helper paid at a lower rate than the other five signalmen. We therefore direct that Carrier shall compensate the claimants for each claimant's respective pro rata straight time hourly rate of pay, the total for all claimants being 320 hours.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984