

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Baltimore & Ohio Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore & Ohio Railroad Company (B&O):

On behalf of Force No. 1990, headquartered at Mt. Clare Shops, which include Guy Mettle, Daniel Jefferson, Ned Downing, Greg Sothoron and Darrell Jones, for an amount of pay in hours equal to the hours that Harmon Electronic Company employees worked, when Carrier permitted or allowed the Harmon Electronics Company employees to violate the Scope of Agreement when between November 7 and December 16, 1983, they installed equipment and apparatus considered as a part of a traffic control system." Carrier file 2-SG-732.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Carrier contracted with the Harmon Electronics Company in 1983 for a new Consolidated Train Dispatching System at Halethorpe, Maryland. Harmon designed, engineered and installed the new system, and the equipment was not accepted by the Carrier until it was installed and proven to be fully operational. The contract covered the period from November 7 through December 16, 1983.

In timely fashion, the Organization filed a Claim on behalf of five employees in Force 1990 contending that the Scope Rule was violated in permitting other than Signalmen to install the disputed centralized traffic control equipment.

The Scope Rule reads in pertinent part as follows:

"This Agreement governs the rates of pay, hours of service and working conditions of all employees classified in Article I of this Agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair and painting of:

. . .

(g) Traffic control systems"

The Scope Rule further provides that "No employees other than those classified herein will be required or permitted . . . to perform any of the signal work described herein," with certain exceptions not applicable here.

The Carrier defends its right to contract out this "turnkey" project, including the installation work cited by the Organization, on the following bases:

1. The Signalmen "did not possess the expertise to carry out a project of this magnitude."
2. "The project could not have been accomplished on a piecemeal basis."
3. The equipment was not the Carrier's property until Harmon had proven it was properly installed, tested and working.
4. All Claimants were fully employed during the period of the installation and thus "lost no compensation whatsoever."

The parties offer no dispute that the work of installing "traffic control systems" is work exclusively accruing to Signalmen. It is this basic premise which must be overcome if the Carrier is to be found justified in its contracting out to Harmon. Were the defenses raised by the Carrier to be proven in affirmative fashion, such would be sufficient to defeat the clear and undenied coverage of the Scope Rule. The Board finds, however, this did not occur here. The Board's reasoning is as follows:

1. Once the applicability of the Scope Rule is shown, it becomes the affirmative burden of the Carrier to justify its action. The Carrier states throughout the Claim processing procedure and in its submission that the Claimants did not have the "expertise"; that this installation was different from other signal installations; and that the Claimants lacked sufficient training in this work. These, however, are allegations only. No probative evidence was provided to demonstrate the particular nature of the work which would be involved in the signal installations which would be beyond the capability of the Claimants.

2. Many Awards have supported the view that, where contracting is otherwise sanctioned, portions of the work need not be provided to employees on a piecemeal basis. In this instance, however, the Carrier states that Signalmen were used on certain portions of this project, along with Harmon's employees. Further, the Organization points to a previous installation (of a different nature and concept) in which Signalmen were "loaned" to the contract or for specific work.

3. This is not the case of equipment or materials purchased and manufactured outside the Carrier's property, but rather it was an installation on the Carrier's property. Thus, the issue is not one of the Carrier's well supported right for outside sourcing, but rather it involved installation work on the Carrier's property. (There was no dispute as to the Carrier's right to seek outside design and engineering work.)

4. Innumerable Awards have held that -- absent emergency or total unavailability of qualified employees -- where there is a contractual violation, a monetary remedy is appropriate. If, in fact, the Claimants should have been assigned the work in question, the work they performed during the period in question could have otherwise been accomplished as directed by the Carrier.

Closely parallel is the situation reviewed in Award 21409, which stated:

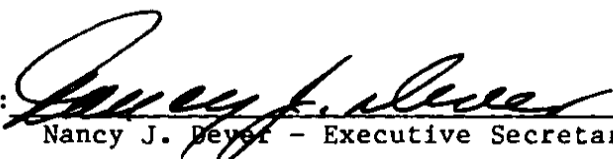
"Adverting to the principles clearly enunciated in Award 5563 we see that Carrier has the burden of proving by factual evidence justification for contracting out the work concededly covered by the Scope Rule: to wit 'the relocating and installing train starting light systems on tracks in the station area.' Review of the record shows that Carrier has failed to carry this evidentiary burden. Mere assertions are not 'factual evidence' and Carrier has offered nothing more than assertions that the overall project was an unusual, novel and considerable undertaking costing several millions of dollars. Moreover, Carrier's assertions about the magnitude and cost of the overall project are irrelevant to the claimed violation of the Signalmen's Scope Rule by subcontracting specifically identified electrical work. (Emphasis added) The focus of this dispute and of Carrier's evidentiary burden must be that electrical work and Carrier offered not one scintilla of factual evidence on the property to justify its decision in terms of the mitigating circumstances cited in Award 5563. The work in question is covered by the Scope Rule, Carrier has failed to justify the contracting out and there can be no doubt that the Agreement thereby was violated."

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.