

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Houston Belt and Terminal Railway Company (HB&T)

STATEMENT OF CLAIM: "Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Houston Belt and Terminal Railway Company (HB&T):

On behalf of Signalmen R. Bravo, D. C. Hagemeier, M. A. Parsons, A. H. Swinhoe, G. A. Van Etten, Signal Foreman I. D. Baxley and K. D. Lamb, headquarters Houston, Texas.

The Local Committee of the Brotherhood of Railroad Signalmen on the HB&T claims that:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly Rule 1 of the Scope, when on June 4, 5, 6 and 8, 1987, it permitted seven (7) employees of an outside contractor (McDonald Electric, 422 Foxglove, Houston, Texas 77076), who are not covered by said Agreement, to install a four inch and a two inch pipe line on Bridge #20 across Brays Bayou to house signal circuits. The work was performed from 8:00 a.m. to 5:00 p.m. on each of the above dates, with one (1) hour meal period, for a total of eight (8) hours each employee performing the above work on dates in question.

(b) Carrier should now be required to compensate claimants at their respective straight time rates as follows: R. Bravo, eight (8) hours; D. C. Hagemeier, thirty-two (32) hours; M. A. Parsons, thirty-two (32) hours; A. H. Swinhoe, thirty-two (32) hours; G. A. Van Etten, thirty-two (32) hours; I. D. Baxley, twenty-four (24) hours; and K. D. Lamb, eight (8) hours, as a consequence of the violation and loss of work opportunity."

FINDINGS:

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

The carrier or carriers and the employee or employees 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 pivotal issue in this dispute is whether the work performed by the McDonald Electric Company on June 4, 5, 6 and 8, 1987 accrued to the Organization under the Scope Rule of the Agreement. Specifically, the outside contractor installed a plastic pipe underneath the surface of Bridge 20, which required workers to go over the side of the bridge and be lowered down to a suspended platform that swung under the bridge. It was Carrier's position that said work was unsafe and dangerous to Agreement covered Signalmen, and more pertinent, had never been performed by the employees represented by the Organization. It also asserts that installing pipelines underneath the surface of a bridge was not included within the Agreement's Scope Rule and observes that when said rule was negotiated circa 1965, it did not contain any provisions or make reference to the installation of pipe castings underneath the surface of a bridge.

Contrawise, the Organization contends that since the Scope Rule contains the words "pipelines" and said words relate to and qualify the words "signal and signaling systems", the work indisputably accrued to signal forces. It notes that Carrier had been installing pipe as casing for cables during the past 3 or 4 years, not 24 years as contended by the Superintendent of Signals. Moreover, it maintains that a past practice cannot overcome specific Scope Rule protection. On this point, it takes issue with Carrier's assertion that the words "pipelines" as used in the Scope Rule were meant to apply only to old style mechanical pipe line used from a control tower to track switches and/or derails, arguing instead that such interpretation was speculative and self-serving. It asserts that the pipeline construction in this instance was designed for a specific application in the Carrier's signal system and, as such, demonstrating this installation as an integral component of the system unequivocally established the project as signal work.

In considering this case, the Board concurs with the Organization's position. We recognize, of course, that the specific type work was historically performed by outside forces, though the time period is disputed, but the language of the Scope Rule is explicit and unambiguous. Past practice cannot overcome clear Agreement language. The key word "pipe lines" and "signals and signaling systems" are integrally related and by extension designed to encompass via an ongoing process of accretion technical changes. The work herein accrued to members of the Organization.

On the other hand, based upon the circumstances of this case, no monetary remedy is justified.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.