

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30479
Docket No. SG-29639
94-3-90-3-626

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of J.L. Ciaccia for payment of 8 hours pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule, when it allowed or permitted contractor's employee to remove talk back equipment from a mast to a new enclosure, on April 30, 1989, at Pier 124. Carrier's File No. SG-185. BRS Case No. 8184-CR."

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 employee 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.

A claim was filed on June 24, 1989, by the Local Chairman at Bridgeton, New Jersey, with the Assistant Division Engineer of Signals in Philadelphia, on grounds that the Carrier violated Rules 6 and 8 of Appendix P of the Agreement on April 30, 1989. On that date, Contractors removed a talk-back system at Pier 124 from the mast so that "...a new enclosure could be built." Relief requested was eight hours at the punitive rate for the Claimant.

As a threshold issue, the Organization alleges that the claim should be forfeited because the Assistant Division Engineer at Philadelphia "...erred in his denial" of the claim at the first level. A review of record shows that the Assistant Division Engineer did deny the claim, and that he did so in a timely manner in accordance with Rule 4-K-1 (a). The Assistant Division Engineer's reasoning for denying the claim (which is not even required by Sub-section (a) of Rule 4-K-1) is indeed a bit odd. He states that the "...claim lacks accuracy...." There is no evidence that such is the case. Such statement, in itself, however, does not warrant conclusion that Rule 4-K-1 (a) was violated. The Rule reads, in pertinent part, as follows:

"Rule 4-K-1 (a)

All grievances or claims other than those involving discipline must be presented, in writing, by the employee or on his behalf by a union representative, to the Supervisor- C&S (or other designated supervisor), within sixty (60) calendar days from the date of the occurrence of which the grievance or claim is based. Should any such grievance or claim be denied, the Supervisor shall, within sixty (60) calendar days from the date same is filed, notify whomever filed the grievance or claim (employee or his representative) in writing of such denial. If not so notified, the claim shall be allowed as presented."

The procedural objection raised by the Organization must be dismissed.

As to the merits of the instant case, the Carrier argues that there was no violation of the Agreement because:

"...the work of removing the 'talk back' boxes from the poles was part of a Northern Contracting project to build enclosures for its employees working the car retarders. In order for these structures to be built, the poles with the 'talk back' boxes attached had to be removed."

According to the Carrier the work of disconnecting the "talk back" boxes does not accrue to members of the Organization. The Carrier cites Third Division Award 25545 as well as PLB No. 2543, Award 1 as precedent in this matter.

In response, the Organization argues that since the "talk back" boxes were connected to the Pier 124 Tipple control room via telephone lines the work accrued to members of the Signalmen Craft.

The Board must observe that this is not the first claim to be filed by the Organization over work associated with the Carrier's consolidated radio and "talk back" intercom system which was installed at Pier 124 in South Philadelphia on property formerly owned by the Pennsylvania Railroad. This equipment was used to control radios in connection with the operation and maintenance of the pier.

The history and background of the instant dispute is outlined in Award 1 of PLB No. 2543. It is worthwhile to cite it, in pertinent part, in order to properly understand the claim which is now here before the Board. In 1944, the former Pennsylvania Railroad, which subsequently became part of Conrail, received approval from the ICC to install an inductive communication system on main track which supplemented automatic block signal, cab signal and manual block signal systems. That system was maintained by members of the Signalmen craft. About ten years later, in 1954, the Pennsylvania Railroad started to replace the inductive system with radios which were leased from outside contractors who also maintained them. According to PLB No. 2543, "...at no time did C&S employees install or maintain radios on the property..." of this railroad. When the Pennsylvania Railroad became part of Conrail in 1976, the latter inherited the leased radio equipment from that Carrier, as well as the owned radio and radio equipment off other carriers which merged into Conrail. On these other lines, members of the Electricians craft, not Signalmen, installed and maintained the radios. In 1979, Conrail decided to terminate the leasing arrangement it had inherited off the Pennsylvania Railroad, and it purchased the existing stock of radio and repair equipment from the contractor. Maintenance, etc., of the radio equipment was assigned to Electricians. The Organization objected to this and filed a grievance. This was arbitrated. Award 1 of PLB No. 2543 concluded that:

"The work of installation and maintenance of (Conrail) owned radio equipment (off the former Pennsylvania and Pennsylvania Reading Seashore Lines) does not accrue to Communications and Signal Department employees represented by the Brotherhood of Signalmen...."

That Award, issued in 1980, was predecessor to another claim and subsequent Award issued in 1985 which dealt with a slightly different aspect of radio installation and maintenance work off the former Pennsylvania Railroad at Pier 124 in South Philadelphia. This second Award is Third Division Award 25545. In August 1982, Conrail installed a consolidated radio and talk-back intercom system at Pier 124, which is on former Pennsylvania Railroad property. The primary function of the equipment was to "...control two radios used in connection with the operation and maintenance of the pier." The system also served as an "...inter-office (talk-back) communication system." When the system was installed in 1982, the Carrier used both Electrician and Signal employees to set it up. The latter filed a grievance on grounds that the work belonged exclusively to C&S employees. This grievance was denied by the Board on the basis of arguments presented by the Carrier which stated that fully 80 percent of the "...audio flowing through the controls is radio related, and that since the interface was built primarily for radio control, it was necessary to use IBEW represented employees classified as Radio Maintainers to perform wiring on the interface, a type of work which (Signalmen) represented employees have never performed on the property."

In the instant case the same "talk-back" radio devices originally installed at Pier 124 were disconnected. The argument here by the Organization is that this is the work of its craft. Precedent established by PLB No. 2543 in 1980, and Third Division Award 25545 in 1985, sufficiently established that such claim cannot be sustained. In the prior two cases, the work was done by Electricians. In the instant case, the work was done by an outside contractor. In none of the cases, however, has the Organization shown with sufficient substantial evidence that work of the type was ever done by members of the Signal craft.

Award

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois this 13th day of September 1994.