

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31158
Docket No. SG-31347
95-3-93-3-319

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former
(Atlanta and West Point Railroad)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atlanta & West Point Railroad:

Claim on behalf of K.C. Ray, J.S. Garrett, W.E. Geddie, M.K. Kephart, R.H. Mayfield, Jr., and R.C. Shumpert for payment of 208 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized an outside contractor to dismantle a pole line from January 13 to February 15, 1992, and deprived the Claimants of the opportunity to perform this covered work. Carrier's File No. 15 (92-44). General Chairman's File No. FL-92-1S. BRS File Case No. 9039-AWP."

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.

The dispute in this case centers around Carrier's use of an outside company to perform the work of dismantling a signal wire pole line. While issues of this general type have been previously reviewed by several Boards of Adjustment, there are nuances present in this case which require individual examination and consideration.

There is no disagreement relative to the fact situation. By letter dated September 3, 1991, Carrier advertised as follows:

"CSXT plans to sell its signal open wire pole line in place 'as is' on the AWP-WA Sub."

In the same letter, Carrier invited the addressee as follows:

"You are being invited to place a bid on this pole line 'as is' in place."

The advertising letter further informed the addressee that:

"The successful bidder will be required to prepay 50% of the bid price of the line"

Subsequently, by contract dated November 6, 1991, Carrier agreed with the outside company as follows:

- "1. Contractor, in accordance with proposal dated October 16, 1991, attached hereto and made a part hereof, shall furnish all labor, supervision, materials, equipment, tools, etc. as directed by Railroad's Mr. J. W. Mabe, Director Signal Maintenance & CNS at 500 Water Street, Jacksonville, Florida 32202 (telephone 904/359-7546).
2. Contractor shall perform said work at a time and in manner satisfactory to Railroad's Dir. Signal Maintenance & CNS and Contractor's bill or bills therefor shall be submitted in triplicate to said Dir. Signal Maintenance & CNS. Contract No. SL91 196 must be shown on all bills or invoices submitted.

* * *

6. In consideration of all the terms and conditions contained herein and upon completion of the work to be performed by

Contractor to the satisfaction of said Dir. Signal Maintenance & CNS, Railroad agrees to pay Contractor the sum not to exceed FIFTY NINE THOUSAND DOLLARS (\$59,000.00)."

The dismantling work on the pole line by the outside firm began on January 13, 1992 and was completed by February 15, 1992.

Because of this action, the Organization on March 12, 1992, initiated the claim which is the subject of this dispute. The Organization's position is two-fold. It contends that the Scope Rule on this property specifically includes "dismantling" as a work function which accrues to the employees covered by the Scope and that, in this case, Carrier did not sell the signal wire pole line, but rather paid the contractor to dismantle and remove it in violation of the Scope Rule. The Organization insisted that this action constituted a contracting-out of Agreement covered work.

Carrier did not address the issue of Carrier's payment to the contractor for the removal of the pole line even though this issue was raised by the Organization during the on-property handling of the dispute. Rather, Carrier argued that inasmuch as the signal wire pole line had been abandoned, it was no longer a part of the operation of the railroad and therefore its dismantling and removal was not covered by the Scope Rule. Carrier also, for the first time before the Board, argued that the named Claimants were fully employed during the claim period and therefore did not suffer any monetary loss.

The issue concerning full employment of the Claimants was not made a part of the on-property handling of the dispute and will not be considered by the Board in its deliberations and determinations. The parties know, or should know, that first time presentations such as this before the Board are not proper and will not be entertained.

The Scope Rule on this property reads as follows:

"SCOPE

This agreement covers rates of pay, hours of service and working conditions of all employees, specified in Article 1, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, dismantling, and repair of all signals, train order signals, wayside or office equipment of communication facilities, interlocking plants, highway crossing protection devices, wayside train stop and train

control equipment, centralized traffic control systems, spring switch mechanisms, line of road electrical facilities, shop repairing of relays, signals, switch magnets, motors, communication facilities, etc., bonding of track for signal and interlocking purposes, together with all appurtenances pertaining to the systems and devices outlined above, as well as all other work generally recognized as signal work.

No employees other than those classified herein will be required or permitted to perform any of the work covered by the scope of this agreement."

The Board studied the several Awards which have been cited by the parties in support of their respective positions. Of particular interest is Third Division Award 30084 which held as follows:

"This Board has consistently held that the Scope Rule does not apply to work connected with removal from Carrier property of unneeded fixtures that it has sold to another enterprise under the terms of an 'As is - Where is' contract. In this regard see Third Division Awards 12800, 19127, 23259, 28489, 28615. The claim is without merit."

The Board finds nothing to disagree with in that Award. However, that Award lends no support to the Carrier in this case. There is nothing in Award 30084 which identifies the language of the Scope Rule which is referenced therein. Additionally, that Award clearly covers a situation in which "unneeded fixtures" were "sold to another enterprise."

The same is true of Third Division Award 23259, Award 8 of Public Law Board No. 3285, as well as Award 140 of Special Board of Adjustment No. 570 which were referenced by the Carrier. In each of those Awards, there is no contention or indication that "dismantling" was an integral part of the Scope Rule and there is a clear indication that the equipment, pole line, etc., had been sold to the party which performed the removal.

In this dispute, there is no disagreement relative to Carrier's right to sell its equipment, assets, etc. What is in dispute is the fact that Carrier did not sell the pole line, but rather paid the contractor to dismantle and remove it. While Carrier initially announced its intention "to sell its signal open wire pole line in place 'as is'," it ended up by agreeing to pay an outside contractor to dismantle and remove the pole line. The term

"sell" means to dispose of by sale. The term "sale" means "a contract between two parties, called, respectively, the 'seller' (or vendor) and the 'buyer' (or purchaser) by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property" (Black's Law Dictionary Revised Fourth Edition). The contract in this case contains none of the requisite elements of a sale.

The Board subscribes to the principle that the sale - that is, the transfer of ownership - of unneeded and/or abandoned equipment, fixtures, pole lines, etc., clearly removes subsequent work on such equipment, fixtures, pole lines, etc., from the Scope of the negotiated Agreement after the sale has been consummated. However, in this situation, there was no sale consummated. Rather, the work of dismantling the signal wire pole line was contracted to individuals other than those classified in the Scope Rule. This is a violation of the clear language of such Scope Rule. In this instance, the parties, by Agreement, included the work of "dismantling" in their Scope Rule. In this instance, the parties, by Agreement, went beyond the "maintenance, repair or construction" which is referenced in Third Division Award 12918 as quoted in Third Division Award 19994 as cited by the Carrier. Here the parties included "dismantling" as a work function accruing to Signal employees. The inclusion of the word "dismantling" in the negotiated Scope Rule, in the Board's opinion, reserves such work to Signal employees provided such work is paid for by the Carrier. That is the situation which exists in this case which causes this claim to be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.