S.B.A. No. 570
Award No. 12
CASE 15

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER AGREEMENT OF SEPTEMBER 25, 1964.

Parties to Dispute: System Federation No.97, Railway Employes' Department, AFL-CIO (Electrical Workers)

And

The Atchison, Topeka And Santa Fe Railway Company (Eastern Lines)

Dispute: That under the terms of the Agreement dated September 25, 1964, effective November 1, 1964, the Atchison, Topeka and Santa Fe Railway Company, Eastern Lines, erred and violated the terms of said agreement when they contracted the removal of eleven (11) miles plus seven hundred and forty (740) feet of poles, down guys, cross arms, line hardware and wire from this 11 miles plus 740 feet of Company property.

Findings:

In September, 1964, the carrier was granted authority by the Interstate Commerce Commission to abandon a portion of its Lawrence (Kansas) District line, extending from Mile Post 3.0 near Lawrence to Mile Post 14 plus 730 feet near Baldwin, Kansas, a distance of about 11.14 miles. Pursuant to said authority, the carrier abandoned the line, effective as of November 15, 1964. Thereafter, it subcontracted to the firm of Bob Hussey, Inc., Oklahoma City, Oklahoma, the dismantling of the abandoned tracks and the removing of the communication lines. The latter work included the removal of approximately 400 poles, 400 crossarms, 58,820 feet of # 8 iron wire, and 365,720 feet of copper wire as well as miscellaneous guys and other poleline material. The subcontractor began the work on April 20, 1965, and completed it on August 24, 1965.

The claimants, division linemen L.L. Isaacs and B.L. Robertson, lead lineman W. L. Morris, lineman J. L. Jones, and apprentice lineman R.K. Sowerby were employed in the carrier's Communications Department at all times here relevant. They filed the instant claim in which they contended that the carrier violated Article II of the September 25, 1964 Agreement (hereinafter referred to as the "Agreement") when it subcontracted the removal of the communication lines in question. They requested compensation in the amount of 217 hours each at the applicable overtime rate. The carrier denied the claim.

In support of the instant claim, the claimants contend that, notwithstanding the abandonment of the line under consideration, the carrier retained ownership as well as sole control of the property and the

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appurtenances thereon. They argue that the removal of the communication lines was work covered by Rule 119 of the applicable labor agreement between the carrier and the organization and thus subject to the limitations provided for subcontracting in Article II of the Agreement.

In defense of its position, the carrier asserts that the subcontracted work was performed after the line was abandoned and after the property was no longer a part of its operations. It submits that the work performed by the subcontractor was outside the purview of the provisions of the applicable labor agreement as well as of Article II of the Agreement.

The basic question presented here is whether the subcontracting of the work in question was subject to the limitations placed upon a carrier's right to subcontract by Article II of the Agreement. For the reasons hereinafter stated, we are of the opinion that the answer is in the negative.

1. The Introduction to Article II of the Agreement provides that "the work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II." Thus, an indispensable prerequisite to the application of Article II is that the work must fall within the scope of the applicable work rules. A careful review of the evidence on the record considered as a whole has convinced us that the work here in dispute did not fall within such scope.

The claimants argue that the removal of the communication lines in question is specifically covered by Rule 119 of the applicable labor agreement, effective August 1, 1945. We disagree. In order properly to evaluate said Rule, it must be read together and coordinated with the Preamble to the labor agreement which defines the scope thereof and thus qualifies the Rule. See: Award 4129 of the Second Division of the National Railroad Adjustment Board and cases cited therein. The Preamble reads, in pertinent part, as follows:

> "This Agreement shall apply to employees of these Carriers who perform work outlined herein in the ... Communications Department..."

The language of the Preamble is neither clear nor unambiguous. Plausible contentions can, therefore, be made for different interpretations. A fundamental rule generally observed by the courts and industrial arbitrators in the interpretation of a labor agreement the wording of which is ambiguous is to ascertain and give effect to the apparent intent of the parties. The rationale underlying this rule is that the law presumes that the parties understood the import of the agreement and that they had the intention which its terms manifest. However, it is not within the authority of a court or an arbitrator to look outside of the written instrument

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to guess or conjecture the intention of the parties and then carry out that possible intention regardless of whether the instrument contains sufficient language to express it. See: Frank Elkouri & Edna A. Elkouri, How Arbitration Works, Rev. Ed., Washington, D. C., BNA Incorporated, 1960, pp. 203-204 and references cited therein.

Applying the above rule to this case, we have reached the following conclusions:

It is a matter of common knowledge requiring no further discussion that a labor agreement between a carrier and the representative of its employees normally relates only to work performed in connection with the maintenance of an operating railroad. The parties are, of course, free to extend the scope of the labor agreement by mutual consent. But such an understanding must reasonably be made known in the agreement. The record before us is devoid of any evidence or indication that the parties to the labor agreement of August 1, 1945, intended to extend its coverage beyond its normal and traditional scope so as to cover work performed on an abandoned and non-operative part of the carrier's property. To read into the Preamble such an intention would amount to pure guesswork. Moreover, the fact that the carrier retained ownership of the abandoned line and the appurtenances thereon is immaterial. The answer to the question of whether the work described in the scope rules is actually covered thereby does not depend on ownership but on the purpose for which the work is performed. In the instant case, the purpose contemplated by the parties to the labor agreement no longer existed. If they intended to cover work on an abandoned and inoperative part of the carrier's operations, they should or would have indicated their intention in the written instrument. But they did not do this and we fail to see any such intention on their part. See: Awards 6910 and 7765 of the Third Division of the National Railroad Adjustment Board.

In summary, we hold that the work here in dispute was not covered by the scope rules of the applicable labor agreement, including specifically Rule 119 thereof. It follows that the subcontracting in question was not subject to the limitations prescribed by Article II of the Agreement. Accordingly, the instant claim is without justification.

2. In view of the foregoing conclusions, it becomes unnecessary to rule on the carrier's further arguments and we express no opinion on the validity thereof.

AWARD

Claim denied.

ADOPTED AT CHICAGO, ILLINOIS, THIS 25th DAY OF JANUARY, 1966.

Charles W. Summers
Referee

Carrier Members

Employee Members

SPECIAL BOARD OF ADJUSTMENT NO. 570
ESTABLISHED UNDER
AGREEMENT OF SEPTEMBER 25, 1964

DISSENTING OPINION OF EMPLOYEE MEMBERS

The opinion of the majority members comprising Special Board of Adjustment No. 570 in Award 12 reading in pertinent part:

> "that the work here in dispute was not covered by the scope rules of the applicable labor agreement, including specifically Rule 119 thereof."

is without foundation.

The Preamble of the applicable labor agreement, effective August 1, 1945 reads in pertinent part:

> "This Agreement shall apply to employes of these carriers who perform work outlined herein in the - - - - - - Communications Department - - - - - - under jurisdiction of the Operating Department."

and makes it abundantly clear that all communications' work, performed on the property of the carrier which is specifically set forth in the agreement and over which the carrier has control and the power to assign to its employes, is the contractual work of its employes covered by the agreement.

Rule 119 of the applicable labor agreement contains the following pertinent language:

> "(a) - - - - - - dismantle inside and outside communication plant - - - - - -,"
>
> "(b) - - - - - - dismantle telephone, telegraph or teletype apparatus, - - - and other communication plant equipment, appurtenances or associated wiring, - - - - - -."
>
> "(c) - - - - - - dismantle pole lines and supports, wires and cables, conduits - - - - -."

which reveals beyond any question of doubt that the work involved in this dispute is specifically covered by the terms of the agreement.

The record, as submitted by carrier, reveals that the work here involved was performed on carrier's property and that carrier had control over the work and the power to assign it. The record submitted by the employes shows that the work here involved is covered by the applicable labor agreement, specifically Rule 119, the Classification of Work rule.

In view of the above stated, it must follow that the subcontracting of the work here involved, was subject to the limitations prescribed in Article II of the September 25, 1964 Agreement, the first paragraph of which reads:

> "The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II."

The statement of the majority reading:

> "It is a matter of common knowledge requiring no further discussion that a labor agreement between a carrier and the representative of its employees normally relates only to work performed in connection with the maintenance of an operating railroad."

overlooks the fact that the instant agreement specifically covers the work and that the agreement contains no exceptions. So called "common knowledge" cannot supersede the clear and specific terms of the agreement.

The findings and conclusions of the majority of the Board are ill advised and do violence to the spirit and purpose of the agreements and accordingly, we dissent.

James E. Yost

James E. Yost

Paul A. Parnell

Paul A. Parnell

Labor Members of Special Board of Adjustment No. 570

Chicago, Illinois

January 25, 1966