

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al., that:

(a) Carrier has, by its action, violated the Scope Rule and other provisions of the Signalmen's Agreement, and continues the violation by having recognized signal work done by persons not covered and who hold no seniority or other rights under the current agreement.

(b) Messrs. D. L. Johnson, J. T. Highsmith, J. P. Cox, L. R. Johnson, and Foreman S. E. Grogan, W. A. Scalf, J. F. Bost, D. B. Strickland, H. D. Fowler, C. E. Scalf, J. C. McCall, Jr., J. L. Bruner, and B. Larson be paid at their respective overtime rates of pay on a proportionate basis, for all man hours of signal work performed by the contractor and his forces, including that done by the Tenn. Power Co. forces, beginning June 15, 1965; and the claim continuing thereafter so long as the signal work between Memphis, Tenn., and Germantown, Tenn., is performed by persons not covered and who hold no seniority or other rights with the Carrier under the provisions of the Signalmen's Agreement, or until the violation has been corrected.

(c) Carrier, in the event of a favorable decision, be required to review its records, in cooperation with the Organization, to develop and determine the amount of work and time in man hours performed by the contractor and his forces and paid for, or the money paid for the signal work performed, including that done by the Tenn. Power Co. forces, to the extent of determining the man hours and/or money that would be due the signal employes involved for the period of time involved in the claims. (Carrier's File: SG-21913)

EMPLOYES' STATEMENT OF FACTS: This dispute, like others from this property, of which some have been decided by the Division and several are awaiting adjudication, involves the performance of Signal Work by persons not covered by the Signalmen's Agreement.

has made or may make that the Mediation Agreement of April 3, 1965 gives the Carrier the right to contract out signal work. Original and copy for your files SG-22114 and SG-21913, as here involved."

On March 25, 1966, the Director of Labor Relations replied to the General Chairman's letter as follows:

"Receipt is acknowledged of your letter of March 15 in which you refer to the claim alleging violation of the scope rule of the signalmen's agreement and demand certain sums of money on behalf of D. L. Johnson and others.

As already pointed out to you in correspondence and verbally, part of the claim which you attempt to assert is barred by Article V of the agreement of August 21, 1954 and we are not waiving the bar.

Without prejudice to the fact that part of the claim is barred this is to advise that we do not agree with the interpretation which you have attempted to place on the signalmen's agreement. Certainly we do not agree with the views expressed by you in your letter of March 15, 1966.

As we have already pointed out, none of the claimants have been adversely affected and none of them have any contract right to be paid the additional sums of money demanded by you on their behalf. We certainly will defend our position in the matter in event you attempt to prosecute the claim further."

OPINION OF BOARD: This is another in the series of similar issues between these parties which have been before the Board. In a number of Awards (e.g., 11733, 13236, 15689, 15874, 15888), the Board has held that work of this kind could and should have been performed by Carrier's own employes, since it was not a large installation "in connection with new work," which would exempt it from the prohibition on contracting under the Scope Rule.

Carrier contends that the work was performed by authority of the Light, Gas and Water Division of the City of Memphis, "under the laws and regulations of the State of Tennessee," and was at the expense of that Division. However this does not meet the other exemption from the Scope Rule, which applies to "smaller installations if required under provisions of State or Federal law or regulations." There is no evidence that the State of Tennessee required performance of this work.

Although the claim was originally filed on August 7, 1965, on behalf of five named men plus others unnamed, it was revised on the property on September 10, 1965, to list 10 men. The original claim on the property had indicated that the others would be named later. It was so worded -- "all men assigned to and working in his gang" -- that they were readily identifiable. Hence it cannot be held that Carrier was not properly apprised of the claim on the property.

The claim charges that work which should have been assigned to Claimants was performed both by a contractor and also by "Tenn. Power Co.," beginning June 15, 1965. Carrier responded to the claim by stating that no work had been performed for it by "Tenn. Power Co.," but that the Light,

Gas and Water Division had relocated a section of Carrier's transmission line on May 10, 12, and 13. This statement was not rebutted, and that portion of the claim is therefore barred, since it concerns an occurrence more than 60 days before the date of the claim which was filed on August 7.

Carrier stated that the work of the contractor, Winsett-Simmons Engineers, Inc., was performed between July 20 and August 9. The number of man-hours involved is not known to the Organization, and its claim therefore is that Carrier be "required to review its records in cooperation with the Organization to determine the amount of work and time . . ." Since such information was not available to the Organization, its request for Carrier's assistance should be granted. Carrier violated the Agreement and the data necessary to establish the remedy should be furnished if it is beyond the ability of the Organization to obtain it.

One employe named in the claim, H. D. Fowler, was off duty due to sickness during the period involved, and therefore he is stricken from the list of employes to whom compensation is due.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

The parties shall ascertain from available records the number of man-hours worked by employes of Winsett-Simmons Engineers, Inc. on behalf of Carrier between July 20 and August 9, 1965, in the manner proposed in the claim. That number of hours shall be divided proportionately among Claimants (excluding H. D. Fowler), and each shall be paid at his straight-time rate for his proportionate number of such hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.