



Award No. 16796
Docket No. SG-17021

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

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

(a) Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, in having recognized signal work performed by persons who are not covered by the agreement and who hold no seniority or other right with the Carrier.

(b) Messrs. A. L. Beaird and V. Cope be compensated 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, or by persons not covered by the agreement. Claim is retroactive 60 days from this date and continuing thereafter so long as the contractor or outside persons are used to perform signal line work in digging pole holes, setting poles, and stringing line wire or line cable, and doing other signal work at or near Oporta Avenue, 35th Street, and Jefferson Avenue, at or near Birmingham, Alabama, in direct violation of the Signalmen's Agreement.

(c) Messrs. H. B. Reed and H. T. Reed be compensated 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 in doing electric welding on the small car retarders, or the so-called car stoppers, located in Norris Retarder Yard, Irondale, Alabama. Claim beginning January 3, 1966, and continuing thereafter so long as the signal work is performed by contract, or by persons not covered by the agreement, or until a correction is made to eliminate the agreement violation.

(d) Carrier, in cooperation with the Brotherhood, check its records to determine the time in man-hours that was worked, or paid for, in claims (b) and (c) in order to determine the amount of money due each Claimant should a favorable decision be rendered in either or both of the claims.

(Carrier's File: SG-22997)

As I have explained on previous occasions, Southern was fully justified in contracting the work because it was beyond the capacity of the claimants, in fact claimants could not have performed it had it been assigned to them. They were neither qualified nor had the necessary equipment with which to do the involved work. Moreover they were on duty and under pay when the claimed work was performed. The courts and prior awards of the Board have denied claims identical in principle to the one which you here attempt to assert. In these circumstances I reaffirm my previous declination of the claim."

OPINION OF BOARD: In January 1966, as part of a project requested by and paid for by the City of Birmingham, Alabama, Carrier subcontracted work involving the digging of pole and anchor holes, setting the poles and anchors, and stringing and attaching cable to newly set poles. Brotherhood claims that this violated the Agreement. Brotherhood also claims that Carrier's contracting out of electric welding on car retarders or stoppers in the Norris Retarder Yard at Irondale, Alabama, violates the Agreement. Carrier does not dispute that the involved work was contracted out, but denies that the Agreement has been violated.

The record shows a set of facts with regard to Claim, part (b), fundamentally the same as those in a number of other cases we have already decided between the same parties (Awards 11733, (Stark), to Award 16372, (Zack)); those awards establish that in circumstances such as we have here the involved work belongs to the Brotherhood and may not properly be assigned to persons not covered by the Agreement. We will sustain part (b), but at pro-rata rate (there being no showing that the work would have been performed on overtime if it had been properly assigned to Brotherhood); and for the number of hours records show were devoted by the contractor's forces to do the work.

Part (c) of the Claim turns on whether the equipment on which the welding was done were car retarders functioning as part of the signal system or car stoppers, which we found in Award 12925 between the same parties, were not. On the property Carrier repeatedly stated, without effective rebuttal by the Brotherhood, that involved were not car retarders, but car stoppers as in Award 12925. Thus this record establishes that they were car stoppers; and we are constrained to come to the same conclusion as in Award 12925; the work on them is not reserved exclusively for the Brotherhood.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement.

AWARD

Part (a) of Claim sustained;

Parts (b) and (d) sustained as modified above;

Part (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1968.

DISSENT TO AWARD NO. 16796,
DOCKET NO. SG-17021

The Majority (Carrier Members and Referee) have erred in denying Part (c) of the claim in Award No. 16796. Their reliance on Award No. 12925 is not well founded because of certain controlling distinctions between that case and this. While admittedly disposing of a dispute between different parties, Award No. 12968 should have been followed since it is not otherwise distinguishable.

Award No. 16796 being in error in denying Part (c) of the claim, I dissent.

W. W. Altus
For Labor Members
(12-5-68)