

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(CSX Transportation, Inc. (former Seaboard Coastline Railroad Company)

STATEMENT OF CLAIM:

1. The CSX Transportation Company violated the Controlling Agreement, effective January 1, 1968, as amended, in particular Rule 1(a) and Rule 29(a) when carrier assigned others than regularly employed as Communications Maintainers (SCL) represented by the International Brotherhood of Electrical Workers to work as per Rule 1(a) of the Controlling Agreement.

2. That accordingly, the CSX Transportation Company be ordered to grant Communications Employee W. M. Davis, ID# 174194, eight (8) hours pay at the pro-rata hourly rate based on work performed by L&N communications employee, J. W. Wilkerson and K. G. Key on February 1 and 2 1988 was work reserved to him by the SCL Communications Agreement.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

As Third Party in Interest, the Transportation Communications International Union was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The pivotal issue in this dispute is whether the work performed by Transportation Communications Union (TCU) represented employees on the claim dates was work protected under the IBEW Controlling Agreement, specifically Rule 1(a) and 29(a) or was work that was routinely performed by TCU represented employees at Atlanta, Georgia. Prior to the establishment of the CSX Transportation Company on July 1, 1986, TCU represented communication workers

of the former Louisville and Nashville Railroad Company (L & N) performed communications work at the Atlanta situs, while IBEW workers covered under the former Seaboard Coast Line Railroad Company (SCL) also performed communications work at this location. The petitioning Organization asserts that the circuits in question being upgraded from open line to the microwave system to fiber optic were of character exclusively performed by IBEW employees and furthermore communications equipment associated with transmissions in the "southward" direction from Carrier's Atlanta, Georgia Terminal was maintained by IBEW employees under the former SCL Agreement.

Carrier contends that the contested work did not replace microwave equipment and was in addition to existing equipment not exclusively covered by the IBEW Agreement. It asserts that the work did not involve any maintenance or repair work to the SCL Microwave Communications System. It also argues in its letter of November 26, 1990, that all southward transmissions do not involve IBEW employees covered under the former SCL Agreement and disputes the Organization's position on this point.

"Transmissions from Atlanta serve the entire CSXT - the former L & N, Clinchfield, GA/AWP/WRA, Monon, C&EI, B&O, C&O, WM and PM as well as the former SCL. Even in the 'southward direction,' all transmissions do not involve the former SCL. The allegation that IBEW-represented communications employees have historically maintained equipment for southward transmissions is simply not true."

In considering this case, the Board concurs with Carrier's position. We have carefully examined the on-situs appeals correspondence to determine the precise technical dimensions of the disputed work, but we cannot conclude that said work exclusively accrued to IBEW employees. To be sure, the Organization's position is buttressed by persuasive statements, but said statements do not overcome Carrier's substantive counter-response. We are not convinced, for example, that all southward communications work from Atlanta was performed solely by SCL employees and not convinced that what was being installed and worked on was not new equipment. As the petitioning party, the Organization is obligated to provide a persuasive indisputable factual basis for an asserted rule violation. It has not met this fundamental litmus test here. We have been informed that Carrier has served official notice to coordinate work now being performed by employees of the former SCL, the former L & N and the former GA/AWP/WRA Railroads and said coordination should provide an effective forum for resolving inter craft work jurisdictional disputes. However, upon the record before us and based upon the evidence we find no justifiable basis for sustaining the instant claim.

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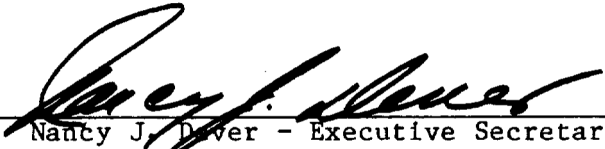
Award No. 12297
Docket No. 12270-T
92-2-91-2-55

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1992.