

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12669
Docket No. 12499-T
94-2-92-2-10

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM:

- "1. That the Soo Line Railroad Company violated the current agreement, particularly Rules 24 and 2, on September 6, 7 and 13, 1990, when it improperly assigned Signal Crew 431 to remove pole line poles and cross arms.
2. That accordingly, the Soo Line Railroad Company should be ordered to compensate the Claimants N.A. Goulet, M.D. Larson, and L.J. Hochstetler for sixty-three (63) hours at the rate of time and one-half at the current rate of pay."

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 employe 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.

Petitioner claims that the Communications Department Agreement was violated when Carrier utilized Signal Crew No. 431 to perform certain pole line work on September 6, 7 and 13, 1990. Carrier, while arguing that the Claim is procedurally defective for a variety of reasons, contends that the work performed by the Signal Crew was on a pole line from which communications wires had previously been removed. The line continued to carry signal wires,

thus, it notes the work was properly performed by Signalmen. The Brotherhood of Railroad Signalmen filed a Third Party brief acknowledging that the pole lines only carried signal wires, and because of this, claimed the work for its Craft.

Petitioner, as the moving party has the burden of proof in this matter. It has demonstrated that prior settlements on the property indicate that when communications wires are on a pole line that work must be done by Communications personnel. In fact, a note on an October 24, 1989 Claim settlement states this very conclusion. Further, an unrefuted statement in the record, signed by a Communications Foreman and three Communications Linemen, indicate that it has been the historical practice for Communications Linemen to be assigned to the removal of poles and cross arms.

However, the settlement and the statement do not contradict Carrier's assertion that the pole line involved only carried Signal wires at the time of the Claim. Carrier made the assertion that the pole line only carried active signal wires in its initial denial of the Claim. Petitioner had several opportunities to dispute this assertion if it was not correct. Search of the record fails to indicate a single instance where it was alleged that the assertion was not factual. Moreover, Petitioner has not submitted evidence that it was not factual. Accordingly, the Board must accept it as factual.

Accordingly, the Board must conclude that Petitioner's Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 9th day of March 1994.