

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12727  
Docket No. 12662  
94-2-93-2-37

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

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

STATEMENT OF CLAIM:

"1. That the Soo Line Railroad Company violated the current agreement on December 9, 10 and 11, 1991 when it allowed Burlington Northern Railroad Construction Crew to set communication poles on Soo Line Railroad property around mile post 408 by St. Paul, Minnesota.

2. That accordingly the Soo Line Railroad Company should be ordered to compensation Soo Line Construction Crew Foremen C.E. Romero and First Class Linemen M.D. Larson and J.D. Johnson ten (10 hours per day at the straight time rate for each day."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Organization alleged that on three days in December 1991, the Carrier permitted the crew of another railroad to set three poles and string 1,000 feet of temporary cable from one of this Carrier's cable boxes to this Carrier's dispatcher's circuit, on the property of this Carrier.

In addition to other defenses, the Carrier argued to the Division that the Organization did not present any evidence that the poles in question were set on the property of this Carrier.

The claim submitted on the property asserted that the poles were set on Carrier's property and specified the location as Mile Post 408 by St. Paul, Minnesota.

In its initial denial, the Carrier argued that another Carrier (BN) set three poles in the area of Mile Post 408, but those poles were not set on this Carrier's property.

The Organization appealed the Carrier's denial and, once again, the Carrier denied that the poles in question were set on its property. However, two months later, a Carrier Vice President confirmed that, in a conference, it had advised the Organization that the poles involved were on Carrier's property and not on BN property.

But, after the admission was made in the July 3, 1992 letter, the Carrier seemed to continue to question whether the poles were set on its property and, in fact, it made reference to the assertion that the Organization was going to check further regarding location of the poles. We wonder in what manner the Organization was required to do so, based upon the admission contained in the July 3, 1992 letter but, in fact, at a much later time, the Organization did supply certain statements concerning the location of the poles, assumedly when it became aware that the Carrier was still disputing the exact location.

A review of the documentation suggests that possibly the July 3, 1992 letter contained an inadvertent mis-statement. However, on the property, the Carrier never made such an allegation, even though the pertinent portion of the July 3, 1992 letter was cited to the Carrier in February 15, 1993 correspondence.

Based upon our review of the handling of the dispute on the property, we are of the view that the Carrier never rebutted the fact that the poles were set on its property and, accordingly, we will sustain the Claim.

AWARD

Claim sustained.

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**O R D E R**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 22nd day of July 1994.