

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, forty (40) hours pay at the pro-rata hourly rate based on work performed by L&N communications employee, J. W. Wilkerson on May 12, 13, 16, 17, and 18, 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 employee or employees involved in this dispute are respectively carrier and employees 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 claim statement filed by the Organization on June 1, 1988, reads in pertinent part as follows:

"Work performed by T.C.U. employee J. W. Wilkeson. Time claimed 40 hours. On the dates of May 12th, 13th, 16th, 17th and 18th time is claimed for the transfer and testing of data circuits from the currently I.B.E.W. maintained microwave transmission path."

Carrier responded by letter dated July 28, 1988, that the equipment worked on by the T.C.U. represented employee did not replace microwave covered by the I.B.E.W. Agreement and was in addition to existing equipment. It also asserted that the contested work was not exclusive to communications employees. By letter dated September 1, 1988, the Organization disputed Carrier's position arguing in effect that the circuits being upgraded from open line to the microwave system to fiber optic was work of a character that was exclusively performed by Communication Maintainers represented by the I.B.E.W. It charged Carrier with violating Rules 1(a) and 29(a) of the Controlling Agreement. By letter dated October 19, 1988, Carrier again denied the claim on the same grounds stated in the July 28, 1988 first denial letter. The Assistant Chief Engineer Communications wrote:

"I fully concur in Supervisor Communications letter of declination dated July 28, 1988. The work in question is in addition to existing equipment and is not covered by the current working agreement, nor is it exclusive to Communications employees."

By letter dated December 12, 1988, the Organization reiterated its position and a claims conference was later held on August 1, 1989. Carrier was granted an extension to August 15, 1989, to respond to this claim as well as others. By letter dated August 14, 1989, Carrier denied the claim with additional specificity. In part, it stated:

"It remains the Carrier's position that employees covered by the SCL Communications Agreement have no agreement right to install, test, and/or maintain new communications equipment on property of the former L & N Railroad. While we do not deny that Communications Employees of the former SCL who are headquartered at Atlanta have participated in such work, we do not agree with your position that former SCL employees have an agreement to participate in such work and certainly have no agreement right to exclusive performance, which appears to be the thrust of these three claims."

Subsequently, the Organization submitted supporting statements via a transmittal letter dated November 21, 1990, by two Communications Maintainers regularly employed at the Atlanta, Georgia, facility. By letter dated November 26, 1990, Carrier denied the claim and noted its objection to the two supporting statements. The Director of Labor Relations wrote:

"We object to your endeavor to bolster these claims at this late date by adding to the record statements dated June 13, 1990 from SCL Communications Maintainers W. M. Davis and L. R. Brown and a grievance allegedly submitted by these two employees on January 28, 1989, which documents you allege are 'supporting statements.' The statements and the grievance are extremely vague and we have no idea what you are alleging those documents support."

The Organization responded by letter dated December 6, 1990, with the following rebuttal statements: (in part referenced)

"Contrary to your allegation, it is the position of the Organization that all and not some of the work involving work performed by the L & N employees with regard to circuits directed in the southward direction to Jacksonville, Florida from the Atlanta facility and equipment that has replaced existing SCL equipment had accrued exclusively and historically to the SCL Communications Maintainers at the Atlanta, Georgia facility. The equipment and circuits involved in this dispute cannot be reassigned to the L & N employees where the work assigned in this dispute had been and is the exclusive work of the SCL Communications Maintainers by existing labor agreement."

* * *

Further it noted:

"The statements of Claimant and L. R. Brown that are part of the record are very clear as to the dispute that has existed at the Atlanta facility. One can readily determine by a simple review of the record of

the dispute CSXT merged with the L & N Railroad and apparently has attempted to orchestrate a silent coordination at the Atlanta facility which has resulted in Carrier's reassignment of work from the former SCL employees to the former L & N employees, which has generated this dispute."

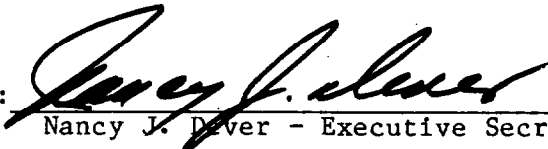
In considering this case, the Board concurs with Carrier's position. Careful reading of the on-situs appeals correspondence does not persuasively show that former SCL employees represented by the IBEW exclusively performed work on this type of equipment. The record is bereft of hard evidence that work of the type contested herein was performed by former SCL employees in the L & N equipment room or the Division Office Building. As the moving party, the Organization has the primary proof burden to establish its claim but we do not find this burden was met herein. Accordingly, for these reasons, we must deny the claim.

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.