

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19873  
Docket Number MW-19735

C. Robert Roadley, Referee

(Brotherhood of Maintenance of Way Employee

PARTIES TO DISPUTE: (

(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Telephone Maintainer J. T. Wilkens and Signal Maintainer O. B. Ross to spread weed and brush killer at various locations between Amqui, Tennessee and Hopkinsville, Kentucky on January 22, 25, 26, 1971 and on certain dates subsequent thereto (System File 1-12/E-304-18).

(2) Trackmen B. Barnett and N. R. Price each be allowed twenty-four hours of pay at their respective straight time rates for January 22, 25 and 26, 1971 and continue to be paid for the same number of hours expended by Telephone Maintainer J. T. Wilkens and Signal Maintainer O. B. Ross in performing the work referred to in Part (1) hereof on dates subsequent to January 26, 1971.

OPINION OF BOARD: On the dates and at the points specified in this claim, the Carrier assigned a Telephone Maintainer and a Signal Maintainer to spread weed and brush killer around telephone poles and under the lines to control the growth of vegetation and brush. Carrier averred that this type of work has been done in years past in the same manner as in the instant case. The Petitioner, however, took the position that weed eradication work came within the scope of the Agreement and should have been performed by Track Department employees.

Here, as in many other disputes involving the question of whether a particular scope rule in the Agreement reserves certain work exclusively to employees under such Agreement, we are faced with a situation wherein the question of exclusivity has not been clearly established by the record before us. In our consideration of this case our attention was directed to two recent prior awards of this Division involving the same parties, the same Agreement, and similar - if not identical - contentions of the parties. These Awards are 19418 and 19419.

In these two Awards we stated, in part:

"A careful study of the record herein and an examination of Awards on the question find work involved in the instant dispute falling in a 'twilight zone' between two crafts."

"The Board has adhered to the principle, when the record lacks conclusive **evidence** of work assignment, that: 'the method of determining to which class such work belongs is by examination of the reason for **the performance of the work**'."

"The Board finds the instant record, without **encroaching** upon Petitioner's contractual **right** to the clearing of brush and vegetation from **the right-of-way** in general, lacks probative evidence necessary to prove **that** the work **here** involved, on this property, **was** not performed **at the behest** of and for **the benefit** of the Telephone and Signal Departments."

After a **thorough** review of the record **before** us we find that the rationale **expressed** in Awards 19418 and 19419 has equal application to this instant **case** and **we** will, therefore, **dismiss** the claim.

FINDINGS: The **Third Division** of the Adjustment Board, upon **the** whole record and all the evidence, **finds** and holds:

That the parties **waived** oral hearing;

That the **Carrier** and the **Employees** involved in **this** dispute are respectively **Carrier** and **Employees** 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 the **claim** be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of **Third Division**

ATTEST:

A.W. Paulose  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.