NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21438

THIRD DIVISION

Docket Number SG-21147

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

a) The Carrier violated and continues to violate the current Signalman's Agreement, particularly, Scope Rule 1 and past practice of long standing, when on or about October 2, 1973, work of removing brush and other undergrowth located under the Carrier's Signal and Communication pole lines was contracted out from Cottage Grove, Indiana (MP-45), to the Davey Tree Service. On or about the same date another contractor started at CW Cabin located at Peru, Indiana (MP-161) performing the same type of work. As a result;

b) Carrier now compensate all of its Signal Employees whose names appeared on the Chicago District Seniority Roster on October 2, 1973, at their applicable rate of S. T. pay, and for a comparable amount of time as that used by the two Contractors in performing the work as cited in part (a) above.

c) Inasmuch as this is a continuing violation, said claim to be retroactive sixty (60) days from date of filing (December 11, 1973) and to continue until such time as Carrier takes necessary corrective action to comply with violation as cited in part (a) above.

, /General Chairman file: 73-79-135. Carrier file: SG-373/

OPINION OF BOARD: At issue in the instant case is the allegation by Petitioner that past practice-reserves to signalmen the exclusive right to cut all brush found under a signal or communication pole line.

This case is governed by the doctrine of exclusivity, and system-wide, exclusive performance of the work by signalmen must be proved to support the claim.

The 11 statements submitted by Petitioner establish only that on the Chicago Division, Signalmen have on occasion over the'past 15 years, cut and removed brush from beneath pole lines, for the purpose of preventing and removing grounds and shorts in Signal Control Wires.

However, this sometime performance does not establish system-wide exclusivity to Signalmen of all brush cutting work. In fact, on this property, the majority of brush cutting work has been done by Maintenance of Way employes, while Signalmen have only cut and removed brush for the purpose of preventing and removing grounds and shorts in Signal Control Wires.

In the instant case, the work Carrier contracted out did not involve trouble shooting grounds in the signal system, but consisted of general brush cutting of the type traditionally performed by Carrier's Maintenance of Way employes or outside contractors.

By failing to meet its burden of proof that the type of work here involved belongs exclusively and system-wide to Signalmen, Petitioner's claim must be denied (Awards 21132, 21131, 21021, 21013, 20799, 20747, 20709, 20600, 20599, 20538, 20532, 20528, 20516, and 11526).

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;

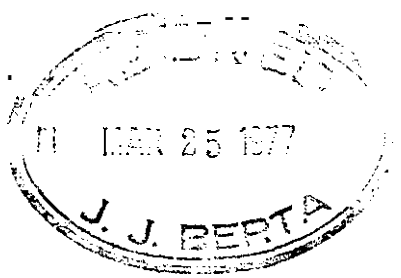
That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulo
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.