

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21924
Docket Number SG-21811

John P. Mead, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (former **Pere** Marquette Railroad):

a) Carrier violated and continues to violate the **Pere** Marquette District Communication Agreement, particularly Scope Rule 1, when on or about May 5, 1975, Carrier contracted with the Asplundh Tree Expert Company, Columbus, Ohio, to **perform** work of clearing brush and other undergrowth from its pole line located on the Chicago **Sub-division** of its Grand Rapids Subdivision, said work being that of tan (10) feet on either side of the center of its pole line. As a result,

b) Carrier now compensate all of its active Communication Department **Employees** whose names appear on the Seniority Roster dated January 22, 1975, at their applicable overtime rate of pay, and for a comparable amount of time as that used by the contractor in performing work cited in part (a) above.

c) Inasmuch as this is a continuing violation, said claim to be retroactive to May 5, 1975, and to continue until such time as violation cited in part (a) ceases.

/General Chairman file: 75-35-123. Carrier file: SG-451

OPINION OF BOARD: The issue here is whether the contracting out of work cited in the Statement of Claim violated Scope Rule 1 of the parties' agreement, there being no dispute as to the essential facts. The rule in question reads as follows:

"This agreement covers rates of pay, hours of service and working conditions of all **employees** specified in Rules 101 to 105 inclusive, engaged in **the** installation and maintenance of communications facilities or equipment and performing work generally recognized as

"**communication** work, including employees in the United States classified under Rule 103 (b) of this agreement. This agreement shall **not** be construed as granting to employees coming within its scope the exclusive right to perform the work of installing and maintaining other than railroad owned facilities or equipment."

Petitioner's argument that, since the work involved in this case is railroad owned facilities, claimants have exclusive right to such work, is not convincing. Prior awards of this Board, in particular Award No. 21438, have established the need for showing systemwide exclusive performance in order to support a claim of the sort here involved. Numerous other awards have established that such showing must be made by a preponderance of evidence.

The record in this case indicates that, while Communication Department **employees** cut brush under certain circumstances, so do other employees and outside contractors. Petitioner has failed to supply the preponderance of evidence necessary to support its claim, in the opinion of this Board.

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 Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.