

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23367
Docket Number MS-23329

John B. LaRocco, Referee

(A. Powley, C. Moon, T. Fudge, D. Rasmussen
(F. Suddarth and R. Sisk.

PARTIES TO DISPUTE:

[Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: "This is to **serve** notice, as required by the rule 8 of the National Railroad Adjustment Board, of our intention to file an **ex parte submission** on January 17, 1980, covering an **unadjusted** dispute between us **and** the Southern Pacific Transportation Company (Pacific Lines) involving the question:

The Southern Pacific Transportation Company (Pacific Lines) violated the **agreement**, effective September 1, 1949 (including revisions) between the Company and the employees of the **former** Pacific Electric Company and particularly the **Scope Rule**, etc.

Very Truly Yours,

A. Powley
T. A. Fudge
F. c. Suddarth
C. Moon

signed: A. Powley
C. Moon
T. Fudge
D. Rasmussen
F. Suddarth
R. Sisk"

OPINION OF BOARD: Six Signalmen have brought this claim for approximately two hundred ninety six hours of straight time **compensation and** eight hours of **overtime** wages when the Orange County Steel Salvage, Inc. allegedly performed work which **was** exclusively reserved to the signalmen **under** the **Scope Rule**.

The facts are not **in** dispute. On May 8, 1978, the **Carrier** sold a portion of the pole lines and **wire** located along the Santa Monica Branch of the former Pacific Electric Railway **to** the salvage company. The property subject to the sale was not in use. According **to** the sales contract, the purchaser

was obligated to remove the pole line and wire from Carrier property. During May, June and July, 1978, the employees of the salvage company removed the pole line and wire.

The claimants argue that the work was traditionally, historically and exclusively reserved to them under the Scope Rule. The Carrier contends that the claimants have failed to prove a violation of the **Scope** Rule. In addition, the Carrier asserts that this Board lacks jurisdiction to adjudicate the claim because the claimants allegedly filed their claim with this **Board** more than **nine** months after the highest designated **Carrier** official denied the appeal of the claim.

To prove a violation of the Scope Rule, the claimants must demonstrate that there has been a customary, historical and exclusive right to **perform** the work. Third Division Award No. **22144**. In this case, there is **insufficient evidence** to support a finding that the **removal** of the pole **line and wire was** covered by the Scope Rule. The **property removed by** the salvage company was no longer owned by the Carrier and even before the sale, the pole line and wire served no useful function. After the sale, the Carrier had no control over the pole line and wire. The salvage company merely removed its **own property**. **Thus**, we must deny the claim.

We note that there is a dispute regarding whether or not the claimants filed their claim with this Board before the expiration of the nine month limitation period set forth in Paragraph 1(c) of the August 21, 1954 National Agreement. However, since we have found that the Carrier did not violate the applicable **agreement**, we need not address the timeliness issue.

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.

Award Number **23367**
Docket Number MS-2339

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Claim denied.

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

ATTEST: *A. W. Paulson*
Executive secretary

Dated at Chicago, Illinois, this **28th** day of **August 1981**.