

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24163  
Docket Number SG-24207

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On Behalf of Messrs. R. E. Hendren and T. G. Morgan for their respective rates of pay, in addition to compensation already received, account not being used to clear brush from the pole line beginning March 17, and ending April 10, 1980. Instead, Carrier used an outside contractor, Sam McQuirter Construction Company, Inc., P. O. Box 427, Winona, Mississippi 38967, in violation of the September 1, 1.976 Agreement, especially Rule 1(b) and (e)."

OPINION OF BOARD: The basic facts of this case are not in dispute. During the period March 17, 1980 to April 10, 1980, Carrier employed the Sam McQuirter Construction Company, an outside contractor, to clear brush around the signal and communication poles from Sardis, Mississippi to Memphis, Tennessee. The Organization contends that such clearing of brush is Signalmen's work under the Scope Rule of its Agreement with Carrier. That rule reads, in relevant part:

"This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department (except supervisory forces above the rank of Inspector, clerical forces and engineering forces) performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling, inspection, testing and maintenance, either in signal shops or in the field, of the following:

(b) High tension and other lines, overhead or underground; poles, cross arms, wires and fixtures, pertaining thereto;  
...

(c) Welding, carpentry, painting, concrete, form, excavating and back filling work, including the operation of machines, used in connection with installing, repairing, or maintaining any system or equipment covered by this agreement,...

(h) No employee or person other than those covered by this agreement shall be permitted or required to perform any work covered by this agreement. (emphasis supplied)

The Organization points out that since the maintenance of signal systems, including pole lines, is specifically covered by the Scope Rule, the performance of such work belongs exclusively to the Signalmen. The Organization asserts that in this case the contractor was cutting brush from the pole line thereby maintaining that line in violation of the Scope Rule.

The Organization acknowledges that, as a general rule, clearing brush from the railroad's right of way belongs to Maintenance of Way employees. However, here the disputed work was done because the Federal Railroad Administration (FRA) had cited Carrier with a violation because there was excessive vegetation near signal lines. Thus, in the Organization's view, the right of way was cleared solely for the purpose of maintaining the signal system. Therefore, this work is exclusively Signalmen's work under the Scope Rule.

Finally, the Organization argues that Carrier may only subcontract work to outsiders (as opposed to assigning it to members of a craft or class) under special circumstances not present in this case. In the Organization's view, the work should have been given to a particular craft, here the Signalmen's.

Carrier, on the other hand, insists that there is no violation of the Agreement. First, it argues that since the work in question is also performed by the Maintenance of Way employees and Electricians, releases must be secured from those Organizations before our Board can decide this dispute. Thus, Carrier asks that this Board give the legally required third party notices before adjudicating the claim.

As to the merits, Carrier argues that the work in question is not specifically covered under the Scope rule of the Agreement. That rule does not refer to the clearing of brush. In fact, some poles do not even carry signal wires. In Carrier's view, the clearing of brush does not belong exclusively to the Organization.

Where a Scope Rule does not specifically cover the disputed work, then the Organization must show that its members have traditionally, on a system wide basis, performed it. Here, other employees, as well as outside contractors, have cleared brush around signal and communication poles. Thus, in Carrier's view, the work performed by the Sam McQuirter Construction Company did not belong to the Organization under the Scope Rule or by past practice. Accordingly, Carrier asks that the claim be denied.

Initially we note that a third party notice is not required under the facts of this case. This claim deals with work assigned to an outside contractor. Third party cases involve work performed by a group of Carrier's employees represented by an Organization different from the petitioning Organization. Thus, a third party notice is not required here and we may, therefore, decide the claim on its merits.

The **crux** of this dispute is whether the disputed work falls **within** the Scope Rule of the **Agreement**. If it does, then the work belongs to the **parties**. If it does not, then the fact that the work has been performed by other crafts requires that the **claim** be denied.

We rule that the work in question does not fall **within** the Scope Rule. This is because the work was not **signalmen's** work. Instead, the work involved primarily maintaining and clearing of the right of way. Such work clearly is not covered **under** the Scope Rule. The Organization failed to prove that clearing of the brush was **performed** exclusively (or **even primarily**) to **maintain** signal **lines**.

Hating failed to prove that the disputed work is specifically covered **under** the Scope Rule, the Organization **must show** that the work has **traditionally** been performed by **Signalmen**.

For the foregoing **reasons**, the **claim** is denied.

**FINDINGS:** The **Third** Division of the Adjustment Eoard, 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:** Acting **Executive** Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **15th day of February 1983**.