

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award **was** rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the United General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation that:

(a) Carrier violated the Scope of the current Signalmen's Agreement effective September 1, **1981**, when it allowed I.B.E.W. personnel to handle, dig hole for, and set pole, and install antenna on pole, at **Altamont**, Greenville and Collinsville, Illinois, former Pennsylvania Railroad property, on or about March 21 and 22, 1983.

(b) Carrier should now be required to compensate Assistant Foreman D. J. Caldwell, Signalmen G. L. Cassidy, D. J. Blakely, M. C. Ackerman and F. F. Spetter, who were on furlough status at the time of the violations, 16 hours each at their respective straight time rates of pay. Sys **tem** Docket 2056-C - Southern Region Case BRS-4-83"

FINDINGS:

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

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On March 21 and 22, 1983, the Carrier used five members of the IBEW craft to "set poles" at **Altamont**, Greenville, and Collinsville, Illinois. These poles were used to mount radio antennae. The Organization claims the work of setting poles is reserved to it by the Scope Rule. The Carrier argues it had no choice but to use members of the IBEW craft to do the task because **an** earlier Award of a Public Law Board assigned radio work to Electricians. The IBEW was joined as a Third Party in the matter and filed a brief asserting it was proper to use Electricians for the work involved.

The particular part of the Signalmen's Scope Rule alleged to have been violated reads:

"It is understood and agreed in the application of this Scope that any work specified herein which is being performed on the property of any former component **railroad** by employees other than those represented by the Brotherhood of Railroad Signalmen may continue to be performed by such other employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not included within this Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement." (Underscoring added)

The Organization contends that Signalmen always performed the work of "setting poles" **in** the district involved in the claim. As such, the provisions of the Rule require that the task continue to be completed by Signalmen.

In support of this contention, the Organization on the eve of its appeal to this Board, submitted a detailed statement to the Carrier setting forth historical evidence that Signalmen had exclusively "set poles" on the line of railroad involved. In our view, this statement made a prima facie showing that the involved work belonged to Signalmen under their Scope Rule. The Organization invited Carrier to investigate and comment on its evidence. Also, it indicated that, if a rebuttal was filed after the date of docketing, it would waive any challenge of untimeliness.

The Carrier responded to the Organization's statement. Its answer, **in our opinion**, failed to rebut a substantial portion of that statement.

Accordingly, it is our view the Organization has made a prima facie case that the work involved in the claim was Signalmen's work **subject to its** Scope Rule. All that remains is a determination if the Award of Public Law Board 2543 conveyed this work to members of the IBEW craft.

As we understand it, the issue before PBL 2543 concerned the assignment of certain radio work to employees represented by IBEW. At one time, a component railroad leased its radios from a private contractor. This contractor used its own employees for repairs and maintenance. I" 1979. Conrail decided to terminate the lease and purchased the radios from the contractor. After the lease was cancelled, employees of the contractor were given jobs with Conrail, and the work connected with **installation** and maintenance of radios was placed under the IBEW Agreement. The Signalmen's Organization objected to this assignment, and the dispute was referred to PLB 2543. I" its 1980 decision, the Board stated:

"The work of installation and maintenance of Consolidated Rail Corporation owned radio equipment does not accrue to Communications and Signal Department employees represented by the Brotherhood of Signalmen."

The Organization contends that, notwithstanding the decision, Signalmen continued to install antennae and poles which IBEW represented employees installed and maintained the radio equipment. The Signalmen's Organization asserts, without rebuttal, that IBEW represented employees never installed poles. Without challenge, the Organization claims the work was performed by Signalmen for more than twenty years before the Award of PLB 2543, and, thereafter, it continued to be performed by Signalmen.


Based upon the record, we find no evidence the Carrier viewed the decision of PLB 2543 as awarding the installation of poles to the IBEW. In this regard, we note that, until Carrier's final on-the-property letter was written, it discussed the disputed work as the erecting of poles. However, in its final letter to the Organization, Carrier on March 20, 1984, referred to the devices as "wooden towers." Notwithstanding such semantics in nomenclature, we view the work performed by IBEW represented employees on March 21 and 22, 1983, as installation of poles, and we consider this to be work within the Scope of the Signalmen's Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.