

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (formerly the Western
Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the
Brotherhood of Railroad Signalmen on the Union Pacific
Railroad Company (formerly the Western Pacific Railroad Company):

On behalf of Signal Department employees S. J. Jackson, K. L. Wall, J. R. Prevette, D. S. Hio, M. A. Jones, W. F. Fisk, Jr., and T. J. Kent for 192 hours pay each at their respective punitive rates of pay account of the Carrier violated the current Agreement, as amended, particularly, the Scope Rule, as well as Rules 3, 8 and 10, when between June 24 and July 26, 1985, it allowed or permitted the Owen's Tree Service to perform signal work of clearing signal circuits of brush and trees, which were causing failures and grounds to the signal circuits, in Niles Canyon between M.P. 30 and M.P. 36. Carrier file: 013-220-WP-3."

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.

The Scope Rule provides:

"This agreement covers the rates of pay, hours of service, and working conditions of all employees, engaged in the construction, reconstruction, installation, repair, reconditioning, inspecting, testing and maintenance, either in signal shops or in the field, of any and all signal systems, car retarders and/or interlocking systems, slide detector devices in connection therewith, and such other work as is generally recognized as signal work"

Between June 24, 1985, and July 26, 1985, employees of the Owen Tree Service cut brush on, in between, and underneath signal wires between M.P. 30 and M.P. 36. In its Claim letter, the Organization contended:

"This work was done to prohibit time delays and interference with train movement, due to signal wires being out of service."

On August 28, 1985, the Carrier's District Engineer responded in part ". . . I am of the opinion that the brush-cleaning operation undertaken by Owen Tree Service is not in any way what would be considered work generally recognized as Signal Work." Thereafter the Organization, on October 21, 1985, cited four examples during 1983-1985 of such work being performed by Signal Department employees. It also stated:

"With regard to Mr. Hite's letter of denial dated August 28, 1985. It must be pointed out that the organization does not claim exclusive rights to this type of work. We are mindful that the carrier has in the past contracted the cutting of trees and brush along the railroad right-of-way for beautification purposes, and to eliminate potential fire hazards. However, it is our contention in this instant case that the sole purpose of removing the trees and brush outlined in the original claim was due to the fact that they were interfering with the Signal circuits. This is supported by the fact that the pole line in question was approximately 200 yards from the railroad tracks."

Carrier responded it failed to see:

"...where the disputed work is specifically reserved to the claimants, and the practice on the property reveals no one class or craft of employees has the exclusive right to brush cutting and tree trimming. In fact, maintenance of way and communications forces have performed similar work, and there is nothing that reserves this work to either communications or signal forces; for example, when communication and signal lines are carried on the same pole line, the assignment of such work is the Carrier's prerogative."

The Organization has submitted eight pages of documents to this Board which it contends establish the purpose of the work as signal related. This documentation was never submitted or discussed on the property and, as new material, cannot now be considered.

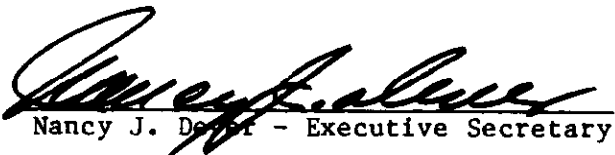
Thus, although the Organization argues the work was done for a specific purpose, no admissible evidence to establish that was presented. The Organization admits it does not claim exclusive right to the general type of work involved and admits brush cleaning is done for several purposes. As there is no claim of exclusivity, and no evidence to establish the purpose of the work in question, an essential element of proof is absent and therefore we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1988.