

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29601
Docket No. SG-30129
93-3-91-3-559

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

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

STATEMENT OF CLAIM:

"Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

Claim on behalf of R.E. Stegall, D. Smith, T. A. Hilderbrand, R. E. Hickman, M. L. Norvell, G. L. Burch, D. H. Otis, T. M. Weil, E. L. Luttrell, H. Stichtenoth.

Claim

- A. Carrier violated the current Signalman's Agreement, particularly the Scope, indicating work on former railroads to continue to be performed by Conrail's employees.
- B. Carrier should now be required to compensate the above mentioned employees eight (8) hours per day continuing from June 5, 1990, until the proper employees are entitled to perform this work." Carrier file SG-267. BRS Case No. 8442.CR.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This Claim alleges the Carrier violated the scope clause of the effective Agreement when certain switch and signal installation work was performed on a portion of its property by employees of a foreign carrier, CSXT, Inc. The disputed work took place between June 5 and July 10, 1990.

Carrier's defense is that the work was not its work and thereby falls outside of the scope of the Agreement. It asserts that the work was performed pursuant to a valid lease of the premises. Carrier says the lease was preliminary to the eventual sale of the property to CSX. The lease enabled CSX to do necessary work required to couple a switch and signal to the CSX control network.

According to the Organization's submission, the sole issue is when did the Carrier cease to be responsible for the maintenance and repair of the disputed property. There is no dispute that the work took place or that work of its kind, if performed for the Carrier's benefit, would fall within the scope of the Agreement. Distilled to its essence, the Organization contends that all facets of the sale transaction, including the lease, could not become effective until approved by the ICC. This approval was not obtained until July 30, 1990, after the disputed work was finished.

Carrier says the lease did not require ICC approval and was effective March 1, 1990, well in advance of the work.

In disputes of this nature, the party asserting the claim has the burden of proof to establish, by submission of probative evidence, all of the requisite elements of the claim. The Organization here asserts that the lease in question was not effective without ICC approval. It has not, however, offered any evidence to support this assertion. Moreover, the ICC decision approving the sale transaction (Finance Docket No. 31706) does not appear to deal with the matters addressed in the lease.

Prior precedent on this property as well as numerous Third Division Awards establish that work performed pursuant to a valid lease, where the work is performed by and at the expense of others and is not for the benefit of the Carrier, falls outside of the scope of the Agreement. The Organization had the burden to prove otherwise. On the record before us, the Organization has failed to do so.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.