

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29649
Docket No. SG-29955
93-3-91-3-348

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

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

STATEMENT OF CLAIM:

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

(a) Claim on behalf of Molusky et al, for payment of 130 S. T. hours and 16 O. T. hours, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule, when it allowed or permitted IBEW members to install, test, inspect and construct Hot Bearing/Dragners on the Southern Tier Line, between November 6th and 30th, 1989." Carrier File SG-239. BRS Case No. 8290-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 were given due notice of hearing thereon.

As a third party in interest, the International Brotherhood of Electrical Workers was advised of the relevancy of this dispute and filed a Submission with the Board.

This is a claim in which the Organization contends that the Carrier violated the September 1, 1981 Agreement when it assigned the work of installing Hot Box Detector/Dragging Equipment Detector Systems at four separate locations on the Southern Tier, former Erie Lackawanna Railroad, to employees represented by the International Brotherhood of Electrical Workers ("IBEW").

The Scope Rule of the Conrail/BRS Agreement reads in pertinent as follows:

"SCOPE

These rules shall constitute an agreement between the Consolidated Railroad Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rate of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work:

* * *

Block signal systems

* * *

Dragging equipment detector systems

* * *

Hot box detector systems
Presence of motion detectors

* * *

Relay houses and relay cases"

* * *

The following items of work on the former railroad indicated will continue to be performed by employees represented by the Brotherhood of Railroad Signalmen:

* * *

Erie Railroad

Electrical work as described in the Memorandum of Understanding dated March 21, 1950;

* * *

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."

The record shows that, prior to September 1, 1981, work on Hot Box Detectors on the former Erie Lackawanna was performed by members of the IBEW. The work in dispute involves new equipment which combines a Hot Box Detector, Dragging Equipment Detector, Hot Wheel Detector and electronic track circuits into one piece of equipment. When the Carrier began deploying this new equipment, after the effective date of the Agreement, it assigned the work to members of the IBEW.

The Organization contends that this claim involves work specifically covered by its Scope Rule. While conceding that the IBEW previously performed the work on Hot Box Detector on the former Erie Lackawanna, it asserts that the work claimed here involves new equipment and technology at new locations, that the work did not exist in 1981, and is thus not covered by the preservation of work clause in the Agreement.

The Carrier asserts that the IBEW by past performance and Agreement had an exclusive right to Hot Box Detectors on the former Erie Lackawanna. It contends in its denial letter of July 6, 1990, that "Some of these new installations have equipment that takes the place of hot box detectors, dragging equipment detectors, and hot wheel detectors, the latter being new devices to which neither the IBEW or the BRS have a prior performance claim." This being the case, the Carrier argues, it could properly assign the work on the new equipment to members of the IBEW.

Based on the record before us, we conclude that the Organization has failed to carry its required burden of proof that it has exclusive rights to the work in dispute. While both crafts presented colorable claims to the work in their Submissions and during oral argument, neither was able to prove an exclusive right to the work.

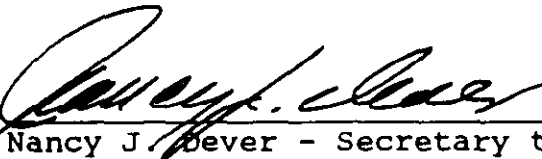
Given the facts and circumstances of this case, and the lack of clear guidelines for the Carrier to use in deciding which craft should perform the work, we cannot conclude that the Carrier's decision was unreasonable, arbitrary or capricious, and therefore find that the Carrier did not violate the Agreement when it assigned the work to the IBEW.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Bever - Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.