

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30084  
Docket No. SG-30646  
94-3-92-3-437

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(CSX Transportation, Inc. (former  
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Corp.:

Claim on behalf of the Communications Department employees on Former Chicago and Eastern Illinois Railroad. Those employees include Mr. C.F. Bennett, ID 188461, Mr. J.C. Fox, ID 188459, Mr. R.J. Tolbert, ID 188463, Mr. E.C. Mack, ID 188460, Mr. D.E. Ungerecht, ID 187912, Mr. S.F. Sievers, ID 197759, and Mr. S.R. Schmiedt, ID 197760. All of these employees presently work Monday through Friday with Saturday, Sunday and Holidays as rest days. Their assigned meal period is as stipulated in Rules #16, and #19 of their working Agreement."

Rules that were violated were the Scope Rule and Rule No. 10.

- (a) The Carrier did violate these rules listed when they did use outside contractors, or employees not covered by the Scope of this Agreement to perform Bonafide work that does fall under this Scope.
- (b) The Carrier used employees employed by M&M Construction Company out of Kansas City to remove wires from a working pole line between M.P. 82.27 and 88. Wires were also removed from M.P. 82.29 to 94.13 on this Seniority District. These wires were a part of Live Telephone circuit and a live Signal System prior to their removal.
- (c) The employees listed as claimants fall under this Scope Rule but were denied this work in preference to outside

contractors who do not fall under this Scope. These employees from M&M also do not hold any Seniority under this Agreement.

- (d) The Carrier's use of these additional forces from outside this Working Agreement did create a Loss of Work Opportunity for the Claimants.

There were four (4) employees used by this outside contractor for a total fourteen (14) hours each day.

1. Due to the above violation and the amount of time these outside forces were used in violating these rules, the Claimants are entitled to a total of three hundred and ninety-two (392) hours at time and one-half at their existing rates of pay.
2. The Carrier should cease these types of violations in the future and allow the employees that do fall under this Scope Rule their rights under their Agreement." Carrier File 18 (91-09) GC File 91-25-03. BRS Case No. 8688-CEI.

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 employee 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 contends that the Agreement was violated when M&M Contracting Company removed telephone circuit and signal system wires from a pole line between Woodlawn Junction and Milford. They had been heavily damaged by an ice storm and were disposed of as scrap. Carrier argues that it sold the wire to M&M under the terms

of an "As is - Where is" contract, and that it was that firm's obligation to remove the items from Carrier's property.

This Board has consistently held that the Scope Rule does not apply to work connected with removal from Carrier property of unneeded fixtures that it has sold to another enterprise under the terms of an "As is - Where is" contract. In this regard see Third Division Awards 12800, 19127, 23259, 28489, 28615. The claim is without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of March 1994.