

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30131  
Docket No. SG-29169  
94-3-90-3-29

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Union Pacific Railroad Company (former  
(Missouri Pacific Railroad)

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

On behalf of Signal Gang 1411 Pine Bluff, AR and Signal Gang 2022 Monroe, LA. List of signal-person on the two gangs are:

## Gang 1411

## Gang 2022

For. S.C. Owens 432-98-6439	For. Roy Landsdale 432-38-6784
Sig. Troy Lansdale 432-32-9268	Sig. J.L. White 439-62-8557
Sig. R.W. Burns 432-92-9344	Sig. J.R. Harris 436-62-8663
Sig. G.L. Sandifer 431-13-7735	Sig. J. Roberts 439-80-6934
Sig. D.E. Ford 429-11-4042	Sig. K. Colvin 434-11-5878
	Sig. D.J. Basco 436-17-4932

Account of Carrier allowed or permitted a M&M Contractor to work 220 hours the week of December 5, 1988, week of December 12, 1988, work 246 hours. The week of December 19, 1988, work 204 hours and the week of January 2, 1989, work 176.

This was a violation of the Scope Rule of the current Signalmen's Agreement, therefore, Claimants should be paid an amount equal to the hours performed by M&M. Carrier file 890126. G.C. file 89-07-M-S."

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.

It is undisputed that in late 1988, the Carrier sold "dead," unused communication wire to a contractor on an "as-is, where-is" basis. The wire was attached to Carrier communication poles between Pine Bluff, Arkansas, and Monroe, Louisiana. It was necessary for the contractor to remove the wire from the poles. While in the process of removing the dead wire, the contractor inadvertently cut an active communications line and in another incident inadvertently knocked down a live signal line. In each of those incidents, repairs to the damage were effected by Carrier employees.

The claim contends that assignment of the work in question to the contractor was a violation of the Scope Rule. However, such an argument cannot be sustained for two reasons. First, there is specific language agreed to between the Parties that allows the dismantling of wires by other than Carrier forces. The relevant language reads as follows:

"IT IS HEREBY AGREED

1. Effective September 1, 1968, the following language shall be included in the Scope of the Agreement effective May 1, 1957, between the parties signatory hereto.

'Construction and maintenance of  
communications pole lines, wires and  
appurtenances.

Note: The word "construction" used in the foregoing sentence does not deprive the Carrier of the right to have other than Carrier forces perform the work required in the rehabilitation, upgrading and dismantling of existing communications pole lines, wire and appurtenances, nor does it prohibit the contracting of major new communication pole line construction, with the understanding that joint pole lines shall be considered as signal pole lines.

It is further understood that contracting the construction of communications pole lines

referred to herein will not result in the furloughing of employees subject to the Agreement between the parties hereto."

In addition to the specific language, it is noted that, generally, scope rules have been interpreted to allow the sale of capital property on an "as-is, where-is" basis.

As for the contractor's so-called "work" on live circuits, the Board cannot conclude that accidentally cutting or knocking down wires was meant to deprive the Carrier employees of work. Indeed, it created more work. Clearly the Carrier did not hire the contractor to knock down the wires.

In view of the foregoing, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 4th day of April 1994.