

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30609
Docket No. SG-30941
94-3-92-3-815

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

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

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood:

Claim on behalf of T. L. Casperson, J. Strasser, L. C. Lane and J. A. Couser for payment of ten (10) hours each at their respective straight time rates, account Carrier violated the current Signalment's Agreement, particularly the Scope Rule, when it allowed or permitted employees not covered by the Agreement to perform the covered work of installing an instrument house on April 16, 1991, at Columbus, Ohio."

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 were given due notice of hearing thereon.

As a Third Party in Interest, the International Brotherhood of Electrical Workers were advised of the pendency of this dispute and filed a submission to the Board.

This dispute arose when Carrier, on about April 16, 1991, used a crew of four non-signal department employees (represented by the International Brotherhood of Electrical Workers) to place the instrument house for a new car identification camera onto a previously installed pole.

By letter dated June 14, 1991, the Brotherhood filed the instant claim. In that claim it contended that Carrier's use of the IBEW employees violated the provisions of the Agreement's Scope Rule reserving such work to employees covered by the Signalmen's Agreement. Carrier denied the claim and it was handled in the usual manner on the property. It is therefore, properly before the Board for adjudication.

The Brotherhood contends that Carrier violated the Scope Rule of the Agreement between the Parties. The Scope Rule reads in pertinent part as follows:

"SCOPE

These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rates 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:...

* * * *

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:

Pennsylvania Railroad, Pennsylvania Reading Seashore Lines and Dayton Union Railway Company

Installation and maintenance of all telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment)."

At the outset, the Carrier maintains that Award 29070 is dispositive of this issue and, therefore, the instant case should be dismissed under the principle of res judicata. The work involved in that case was installing and replacing communication circuits between cameras and monitors, not construction of instrument houses. Accordingly, the cases are clearly distinguishable, and the principle of res judicata does not apply.

In Award 28739, cited by the IBEW, the Board found that the Scope Rule at issue was general in nature -- "That is, the Rule [did] not specifically cover the work in dispute." On that basis, the Board properly denied a similar claim between these parties. In the instant case, however, the Scope Rule does specifically cover the work in dispute; to wit, "relay houses". Accordingly, the Brotherhood is not required, as the Carrier contends, to prove its right to the work "by custom, tradition, and practice on a system wide basis." (Third Division Award 28739, ibid.)

Carrier's only remaining defense is that Signal Department employees lacked the necessary equipment to perform the work. Notwithstanding that this defense was raised belatedly (after the January 9, 1992 conference between the Parties), Carrier has not refuted the Brotherhood's assertion that it did, in fact, have line trucks in Buckeye Yard capable of performing the work.

With respect to the Brotherhood's claim for ten (10) hours' straight time pay for each Claimant, as was previously held in Third Division Award 29232 and Second Division Award 11660 .."when work is improperly assigned to individuals outside the Agreement, full employment of Claimants is not a bar to [award] of reparations." As was held in Second Division Award 7504:

"...To say that the Claimant is not entitled to pay because, at a given moment, he was under pay elsewhere would obviously give the Carrier a latitude of work assignment not sanctioned by the rules."

We are in agreement with the Carrier, however, that any payment should be limited to actual number of hours worked. Accordingly, there should be a joint check of Carrier's records to determine the exact number of hours worked by the four IBEW employees who performed the work at issue, and payment to Claimants should be limited to payment at straight time for those hours.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.