

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31221
Docket No. SG-30438
95-3-92-3-179

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation
(Amtrak)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on Amtrak (former NYNH&H):

Claim on behalf of S.T. Giblin, K.J. Ezovski, and E.J. Parkhurst for 28 hours pay each because the Carrier violated the Scope, when it used employees from another craft to remove signal equipment. Carrier File No. NEC-BRS(N)-SD-498. GC File No. 169-90. BRS Case No. 8594."

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.

The Organization charges that the Carrier violated the applicable Scope Rule when it assigned employees represented by the International Brotherhood of Electrical Workers (IBEW) to perform certain overtime work in association with effecting a cutover on the evenings of August 28 and 29, 1990. The Board determined that the IBEW had a third party interest in this claim within the meaning of Section 3 First (J) of the Railway Labor Act, as amended. The Board provided the IBEW with notice of the pendency of this dispute and the IBEW appeared before the Board.

The first paragraph of the Scope Rule provides:

"This agreement covers rates of pay, hours of service and working conditions of employees, except engineering and clerical forces, and supervisory forces above the rating of Foremen, engaged in the construction, repair, inspection, testing, and maintenance either in the railway signal shop or in the field of all railway signal equipment used in connection either directly or indirectly with train operation regardless of its type or how actuated, including all kinds of interlocking, block signals, car retarder systems, remote control of switch and signal systems, wayside train stop and cab signal systems, all signal circuit wiring, signal storage batteries and signal storage battery charging systems, signal substation for generation or change of characteristics of current and all appurtenances necessary to such systems, also all highway crossing protection devices electrically operated and automatically controlled by track circuits or in conjunction with wayside signal system except work of erection and removal of signal masts and platforms in the electric zone. All other work generally recognized as signal work."

More specifically, the Organization asserted that the IBEW represented employees were actively involved in the disconnection of the old signal system and the dismantling of signal poles, platforms and equipment. On the other hand, the Carrier submitted that two Signalmen removed dead cables, took off signal heads and dismantled the signal poles. According to the Carrier, the IBEW represented employees merely hauled away the retired signal equipment. The Organization replied that the IBEW employees took apart as well as carried away the signal equipment and apparatus.

This case presents an irreconcilable conflict of fact. The Organization raised the unsubstantiated assertion that the IBEW employees played an integral role in the dismantling of signal equipment while the Carrier contends that the IBEW employees were not involved in taking down the old signal equipment. Since this Board is confronted with an irreconcilable factual conflict, the portion of the claim, relating to the disconnection and dismantling of signal equipment and appurtenances, must be denied for want of proof. Third Division Awards 21436 and 25973.

Therefore, the record is left only with evidence that the IBEW represented employees operated a vehicle to haul away the already dismantled signal poles and equipment. Hauling equipment is not related to either the dismantling of the old signal system or the construction of the new signal system. The mere operation of a company vehicle to haul away and dispose of retired signal equipment is not a Scope Rule violation. Public Law Board No. 3097, Award 1. Finally, hauling away scrapped equipment is wholly unrelated to the cutover.

To reiterate, the Organization failed to meet its burden of proof that the IBEW employees did any work which is exclusively reserved to the craft of Signalmen by the Scope Rule.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.