

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31494
Docket No. SG-31415
96-3-93-3-399

The Third Division consisted of the regular members and in addition Referee James E. Mason 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 the National Railroad Passenger Corp. (Amtrak-N):

Claim on behalf of G. Perlman, C.C. Carter, R.F. Wallace, W. McMahan for payment of 15 hours each at the straight time rate of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than employees covered by the Signalmen's Agreement to perform the covered work of dismantling and removing signal equipment, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. NEC-BRS(N)-SD-589. BRS File Case No. 9004-NRPC(N)."

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 or 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 dispute in this case concerns Carrier's use of Signal Linemen who are represented by the International Brotherhood of Electrical Workers (IBEW) to perform work in connection with the removal of signal masts which the Signalmen's Organization contends belongs to employees represented by the Brotherhood of Railroad Signalmen (BRS). The Board gave due notice to the IBEW, as an interested third party, relative to the pendency of this dispute. The IBEW presented a Submission and appeared before the Board.

The work which formed the basis of this dispute consisted of the following two concurrent events:

1. During the time period from 10:30 P.M., October 4, until 10:30 A.M., October 5, 1991, the above named Signalmen performed service at the overtime rate of pay disconnecting cables from retired relay cases and signal masts and making a cutover of new electronic track circuits and signals.

2. During the time period from 10:30 P.M., October 4, until 1:30 P.M., October 5, 1991, Signal Linemen represented by the IBEW, working along with a Signal Maintainer represented by BRS, performed the service of removing the remaining equipment from the abandoned signal cases and masts and dismantling and removing the abandoned signal masts.

The Organization alleged that the work of dismantling the signal masts was work which accrued to the Signalmen's craft and the use of IBEW-represented employees to perform such service constituted a violation of the BRS Scope Rule which reads as follows:

"This agreement covers rates of pay, hours of service and working conditions of employes, except engineering and clerical forces, and supervisory forces above the rating of Foreman, 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.

UNDERSTANDING: The line of demarcation of the signal forces in relation to associate departments is the point the following work terminates -- namely: the signal men shall handle all signal work, up to and connections with the secondary leads of Service Transformers, all equipment for train stop, train control and cab signals up to and attached to rails, all signal system wiring up to and including connections of terminals of aerial wires, aerial cables, underground conduit system cables and submarine cables; also the placing of all signal parkway or signal trenchlay cable but not the excavating that would involve the tracks, ties or ballast. All other digging in connection with signal installation will be done by signal forces. All concrete foundations for signal and interlocking apparatus to be done by the signalmen except foundations for signal bridges.

The scope excludes employees at the Cos Cob Power Plant and the Signal Power Supply facilities at New Rochelle Junction and Water Street, New Haven, (U. I. Co. supply).

The scope rule is predicated upon conditions and practices as in effect on this property. It does not add anything to the work which signal forces have heretofore performed on this property or take away from them work which they have heretofore performed." (Emphasis added)

The Organization argued that the removal of the abandoned signal masts was an integral part of the total signal rehabilitation project and was therefore covered by the provisions of the BRS Scope Rule. This "inclusion" in the Scope Rule, the Organization argued, is confirmed by the language of the Scope Rule which exempts the removal of signal masts, etc., only in the so-called "electric zone," which is not involved in this case. The Organization contended that, "By establishing an exception for the Electric Zone, the parties clearly recognized that installation and removal of signals at other locations was covered by the Agreement" (underscore ours). Therefore, it argues that the Claimants suffered a loss of work opportunity and should be compensated accordingly.

The Carrier insisted that, in this situation, Signalmen were properly used to remove the old signal equipment and to make the cutover to the new signal system. It further argued that a Signalman, in fact, de-energized the power to the out of service signals and cases and cut all signal cables to free the locations for subsequent removal. Carrier further argued that no single craft had exclusive jurisdiction over the removal of out of service signal masts and that the general nature of the BRS Scope Rule does not reserve such work exclusively to Signalmen.

Carrier additionally contended that the claim as made was unwarranted and excessive inasmuch as the Claimants were simultaneously on duty and under pay for 12 of the 15 hours claimed.

The Board reviewed and studied the Scope Rule here in question. The Organization's argument relative to the "electric zone" exception is not persuasive. It does not create an exclusive right to all dismantling and removal of out of service signal masts on this property. During the on-property handling of this dispute, Carrier advanced the unchallenged assertion that in this territory "signal masts are erected and removed by BMW, IBEW and BRS dependant (sic) on availability of equipment and accessibility to the work site. No craft has exclusivity to this work." While assertions standing alone do not necessarily constitute probative evidence, nevertheless, unchallenged assertions are often accepted as fact. The general Scope Rule here in dispute does not contain the clear and unambiguous language which specifically excludes the use of IBEW-represented Linemen from the performance of the type of work which is involved in this instance. The Organization has not met the burden of proof to establish its exclusivity of performance. Accordingly, the claim as presented is denied.

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 23rd day of May 1996.