

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31638
Docket No. SG-31314
96-3-93-3-371**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of W.E. Whitebread, Jr., for payment of three hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than an employee covered by the Agreement to perform the covered work of operating equipment in connection with pole line repair work on March 12, 1992, and denied the Claimant the opportunity to perform this work. Carrier's File No. SG-472. General Chairman's File No. RM1218-105-782. BRS File Case No. 8979-CR."

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 Board determined that the International Brotherhood of Electrical Workers (IBEW) may have had an interest in this dispute inasmuch as an employee represented by the IBEW was used by Carrier to perform certain work which the Brotherhood of Railroad Signalmen alleged belonged exclusively to Signalmen. Therefore, the Board gave due notice to the IBEW as Third Party relative to the pendency of this dispute. The IBEW presented an ex-parte Submission to the Board and appeared before the Board during the hearing on this case.

This claim involves not one, but two separate issues which must be addressed by the Board. In the initial presentation of the dispute, the Organization alleged that the IBEW-represented employee:

"Removed a pole from an out of service location and transported it to a location on the west side of North Hills Road crossing, MP 11.2 of the York Ind. Track. Removed a stub of a broken pole at North Hills Road and set the pole which was transported to there."

The claim was denied by Carrier for the reason that the Claimant was not denied work opportunities inasmuch as he was paid 40 hours for the workweek in question. Carrier's initial denial included the following:

"The truck was used only to assist in performing line work."

When the claim as initially presented and denied was appealed to the first level of appeal, Carrier, in its subsequent denial of the claim, asserted as follows:

". . . the IBEW represented employee that drove the boom truck on the claim date performed no service other than the transporting of material. BRS represented employees were at the location and handled the removal and installation of a pole."

Following conference on the dispute at the highest on- property appeals level, Carrier again reaffirmed its denial of the claim on the basis that:

"The mere transporting of a new pole which, as indicated by the Manager - Labor Relations in his denial dated June 29, 1992, was installed by BRS represented employees, is not a violation of the Agreement."

This denial at the highest on-property appeals level was dated September 15, 1992.

Subsequently, by letter dated November 9, 1992, the Organization alleged that their position in regard to this dispute was supported by an alleged inclusion of a statement dated August 26, 1992, from a BRS-represented employee which alleged that the IBEW-represented employee had, in fact, assisted the BRS-represented employees in the actual pole line work at the North Hills location. By letter dated December 8, 1992, Carrier denied ever having received the alleged document as alluded to by the Organization. For reasons that are not explained in the case record, the Organization never responded to this contention by the Carrier. Instead, the dispute was permitted to come to this Board unresolved as to the exact work which was or was not performed by the IBEW-represented employee.

The record is clear and undisputed that the IBEW-represented employee did, in fact, transport a pole from one location to another. However, there is no clear evidence or proof that the IBEW-represented employee performed any other work. There are allegations and assertions by the Organization, but they do not rise to the level of proof. The alleged statement of the witness may well have been the required proof, but there is no evidence that this internal Organization document was ever presented to the Carrier in spite of the more than six month lapse of time between the Carrier's denial of knowledge of the document and the filing of the claim with this Board. Therefore, the Board cannot make an affirmative ruling on that aspect of the dispute because of the obvious unresolved conflict of the evidence.

On the sole issue of the IBEW-represented employee transporting the pole from one location to another, the Board is convinced that such work is not within the exclusive domain of either craft. The Board finds that the logic expressed in this regard by Third Division Award 29708 is equally applicable in this instance. That Award contains elements of both of the issues which are present in this dispute, that is, the issue of transporting of material, as well as the absence of proof that the employee who performed the transport of material did, in fact, perform service other than the transport of material. See also Third Division Award 28353.

Therefore, on the basis of the record as it exists in this particular case, 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 29th day of August 1996.