Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31639
Docket No. SG-31326
96-3-93-3-321

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 J.F. Crawford for payment of three hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed employees not covered by the Signalmen's Agreement to perform covered electrical work on December 8, 1991, and deprived the Claimant of the opportunity to perform the work. Carrier's File No. SG-481. General Chairman's File No. RM2315-59-772. BRS File Case No. 9138-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.

On the basis of the fact situation which existed in this case, the Board determined that the International Brotherhood of Electrical Workers (IBEW) had an interest in the dispute. Therefore, the Board gave due notice to the IBEW as a 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 of the case.

From a review of the respective Submissions, it is apparent from the record that Carrier assigned an IBEW-represented employee to make needed repairs to radio equipment. In the performance of this Carrier-instructed work, the IBEW-represented employee untied and removed two AC line wires from a pole, re-positioned one of the wires and effected the necessary repairs to the radio equipment. The record further reveals that subsequent to this action by the IBEW-represented employee, a Brotherhood of Railroad Signalman (BRS)-represented employee was utilized to re-tie the AC wire which had previously been removed by the IBEW-represented employee. While there is some discussion relative to the exact details of this work scenario, the basic claim facts are as stated here.

For its part, the BRS has taken no exception to the use of the IBEW-represented employee to make the necessary repairs to the radio equipment. It does, however, contend that the work on the power lines on this property accrues to BRS-represented employees and that the use of the IBEW-represented employee to perform the work in question on the power line violated the BRS Scope Rule and, in particular, Appendix "D" of the Agreement which specifically restricts such work to BRS-represented employees on this particular property.

The Carrier argues that the work which was performed by the IBEW-represented employee concerned only the necessary repairs of the radio equipment. Carrier further insists that the IBEW- represented employee, if he performed any work which may be held as accruing to BRS-represented employees, did so without instructions or authorization from Carrier. It additionally contends that, in any event, the amount of power line work performed by the IBEW-represented employee was "de minimus." Carrier further argued for the first time before the Board that the claim for payment at the time and one-half rate for work which was not performed by the Claimant was excessive. For all of these reasons, Carrier urges that the claim be denied in its entirety.

The IBEW position consisted primarily of agreement with the Carrier relative to the performance of necessary radio repair work by the IBEW-represented employee and of a reminder to the Board that it lacks authority to revise, amend or rewrite the agreements of the parties.

There is no question but that on this property the work of maintenance of radio equipment does not accrue to BRS-represented employees. This fact was made clear in the Award of Public Law Board No. 2543 and was repeated in Third Division Awards 28739 and 29070 each of which involved these same parties.

There is also no question but that on this property the work on the AC power lines does accrue to BRS-represented employees. This conclusion is supported in this particular case not only by the provisions of agreed-upon Appendix "D" but also by the fact that BRS-represented employees were, in fact, involved in the replacement of the pole line wire which had been removed by the IBEW-represented employee.

Carrier's position relative to the unauthorized performance of work by the IBEW-represented employee is specious at best. Carrier instructed the employee to find the problem and repair the radio equipment. It is, therefore, responsible for the work which he performed in the location and repair of the radio equipment.

Carrier's argument relative to "de minimus" is interesting but not convincing. There exists in this dispute a well-defined demarcation between the work which accrues to the respective Organizations. DE MINIMUS NON CURAT LEX is defined as follows:

> "The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles" (Black's Law Dictionary, Revised Fourth Edition).

A "de minimus" argument is one which must be given close scrutiny. Such arguments have been addressed many times by Boards of Adjustment generally on the basis of simplicity of the task performed, on the limited skills required to perform the task and on the brief time involved to perform the task. In this dispute, the Board must examine whether the inconsequential act of procuring a battery as referred to in Second Division Award 8778 or the minor task of flipping a switch as referred to in Award 1 of Public Law Board No. 2114 compare to the combined acts of removing two AC line wires, relocating one of the wires under a crossarm of the pole line, retying one of the wires and the ultimate act of retying the other wire which was subsequently done by a BRS-represented employee. The Board does not think so. The work performed in this case by the IBEW-represented employee was more than a "trifle." Carrier's case is rejected.

On the basis of the on-property case record as it exists in this instance, the Board concludes that the pole line actions of the IBEW-represented employee did, in fact, infringe upon the rights of the BRS-represented employee. As to the remedy, the claim as presented and progressed is for three hours at the time and one-half rate of pay.

Had Carrier raised this issue of excessive payment during the on-property handling of the dispute, its citation to the Board of Third Division Awards 26340, 27606 and 28192 involving these same parties could well have had an influence on the Board's determination. However, this issue was not raised during the on-property handling of the dispute and cannot properly be injected into the arguments for the first time before the Board. Therefore, it is the Board's conclusion on the basis of the record as it exists in this case that the claim as presented must be sustained.

AWARD

Claim sustained.

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 29th day of August 1996.