

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32278  
Docket No. SG-31836  
97-3-93-3-742

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

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

**STATEMENT OF CLAIM:**

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

**CASE No.1**

Claim on behalf of R. R. Glaser and R. T. Parkhurst for payment of 12 hours each at the straight time rate, and T. E. Carman and L. J. Kuhn for payment of six hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized an outside contractor on May 21 and 22, 1992, to perform the covered work of installing pole line back guys at four locations near Bethlehem, Pennsylvania, and deprived the Claimants of the opportunity to perform this work.

**CASE No. 2**

Claim on behalf of T. E. Carman for payment of 59 hours, R. R. Glaser and R. T. Parkhurst for payment of 23 hours each, L. J. Kuhn for payment of 18 hours, G. A. Greiner for payment of 32 hours, and J. J. Connolly and E. M. Daly for payment of 24 hours each, at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope, when it utilized an outside contractor from May 26 to June 3, 1992, to perform the covered work of installing poles and pole line back guys at several locations near Bethlehem, Pennsylvania, and deprived the Claimants of the opportunity to perform this work.”

**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 alleges that the Scope of the Agreement was violated when the Carrier had an outside contractor install pole back guys on the Bethlehem Branch. During the progression of this claim the Organization asserted that the Carrier had R&J Electric perform work that belonged to the Signal employees.**

**The Carrier denied the claim on two major grounds. First, the Carrier argued that the work was performed on the former Reading Railroad and covered by the IBEW Agreement. The Board finds that this argument was abandoned after the Organization pointed out that the high power and communication lines had been de-energized leaving only signal lines on the poles. Secondly, the Carrier argued that the Bethlehem Branch was acquired by SEPTA. This forms the core issue in this dispute. In fact, the Carrier's position was that:**

**"... the Bethlehem Branch was acquired from Conrail by SEPTA on March 30, 1979, including related appurtenances and facilities thereon. As the owner SEPTA determines who shall perform work on its property. In this instant case, R&J Electric was selected to remove the abandoned pole line which subsequently included back guying of the remaining crossing poles. Although Conrail may be selected as a contractor by SEPTA, this fact should not be construed to mean that Conrail employees have the exclusive right to certain work on SEPTA property."**

The Organization rejected such argument stating that:

**"... we were never advised of this so call (sic) take over by SEPTA, but to the contrary Appendix K, signalmen Seniority District No. 5, clearly shows this property falls within the Signalmen's Agreement entered into by and between Consolidated Rail Corporation ant the Brotherhood of Railroad Signalmen effective September 1, 1981."**

The Board finds that the May 22, 1979 letter can not be considered in this dispute. There is no probative evidence that it was ever discussed or exchanged on the property and it is therefore improper evidence.

The critical question before us is whether the Carrier contracted out Scope protected work as the Organization claims. The Carrier stated that the work was SEPTA's and not the Carrier's which was only selected as a contractor for SEPTA. The Organization challenged this point. The Carrier came back with no proof that SEPTA, rather than the Carrier controlled the work. Nor does the Board find in the Carrier's denial, supra, a clear statement that the work performed was not contracted by the Carrier; under its control; performed at its expense; but instead was contracted out and controlled by SEPTA.

Given the state of this record involving the Scope Rule and Appendix K, the claim must be sustained. The affirmative defenses of the Carrier were not proven. There is no evidence that the Bethlehem Branch was sold and that the contracting out was beyond the Carrier's control. The Claimants are entitled to straight-time compensation for the hours utilized by the outside contractor for the work performed in this claim.

### **AWARD**

**Claim sustained in accordance with the Findings.**

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**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 7th day of October 1997.**