

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32456
Docket No. SG-32566
98-3-95-3-476**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 M. J. Gusley Jr. and V. A. Reber for payment of 12 hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized management employees to perform covered work at Reading, Pennsylvania on January 28, 1993. Carrier’s File No. SG-723. General Chairman’s File No. RM2470-26-893. BRS File Case No. 9680-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.

As Third Party in Interest, the International Brotherhood of Electrical Workers (IBEW) was advised of the pendency of this dispute and chose to file a Submission with the Board.

There are many factual disputes with reference to this claim which the Board has neither the information nor authority to resolve. Based upon what is clear, the Carrier and Organization do agree that on January 28, 1993 Assistant Supervisor Daer plowed cable and Assistant Supervisor Miller did assist in laying cable. The Organization alleges that Scope protected work was performed by Supervisors in violation of the Agreement. The Carrier asserts that under the existing work context the actions did not violate the Agreement. The Carrier further asserts that the Claimants were not the proper Claimants, as they were not the senior men on the gang performing the work.

The IBEW appeared at the Hearing for presentation of argument. The Electrical Workers argued that the work performed was that of installing communication cable and belonged to their employees, not Signalmen. They further argued before this Board that the disputed work was exclusively IBEW work and proven by prior Section 6 notices. The Signalmen also chose to attend and argue at the Hearing. The Signalmen argued that the work performed was a joint project, but the dispute involved Signalman work. The Signalmen filed a Response emphasizing that the IBEW lacks a valid reason to assert a Third Party interest in that the issue is between signal forces and Supervision and not the IBEW.

Considering first the Carrier's contention that the claim is invalid due to improper Claimants, the Board has studied this argument and Awards (for example, Third Division Awards 19103, 19077). In this instance there may be more senior employees, but such does not negate the claim, nor render it moot in these circumstances (Third Division Award 31749).

Turning to the arguments raised by the IBEW, we do not find them on point with all elements of this dispute. The claim at bar is that the Carrier utilized two Supervisors to perform Scope protected work on the joint project. In the first instance, the work complained of is operating a cable plow machine. The fact that the work belonged to Signalmen is acknowledged during the claim handling on the property. The Carrier stated that "It is a fact that Assistant Supervisor Daer did operate a cable plow on this date . . ." and all argument on property pertained to a factual dispute over why signal employees did not perform their applicable craft work on the date of claim. There is

nothing in this record to suggest that IBEW employees were involved with this specific matter.

The Board finds evidence of record that the Carrier requested Signalmen to operate the equipment. The circumstances of this first instance are that while Signalmen Brunner was qualified to operate the cable plow, he operated the backhoe, leaving no employee at the site capable to do the work. The Supervisor asserts he asked Brunner to do the work and Brunner refused. Brunner denies refusing and states he was never asked. This Board is not constituted and has no authority to resolve a dispute in facts. Whatever the case, no one else was called to perform the work. The evidence of record is that the Supervisor performed the work and this is a violation of the Agreement.

In the second instance, the Organization alleges that the Carrier used a management employee to assist in laying the cable. Here again, the IBEW asserts that the work was being performed by IBEW employees and belonged to them. This position has support from the statement from the involved Supervisor who indicated that:

“ . . . the man laying the cable on the berm started to stumble. In the interest of safety I grabbed on to the cable to assist and in an attempt to prevent an obvious injury to an employee. At that point we stopped the operation until I could get additional I.B.E.W. employees to assist.”

The Carrier's arguments that the event comprised “20 to 30 minutes” and that such circumstances are not only prudent, but did not comprise a violation of Signalmen's work have merit. There is a lack of proof from the Organization that the work in the second instance was a clear and demonstrable violation of the Scope Rule, was Signalmen's work or more than de minimus. It is rejected herein for lack of proof.

Accordingly, the claim is sustained only for the time when the cable plow was operated by Supervisor Daer. The claim is sustained for a single Claimant at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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 21st day of January 1998.