

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32596  
Docket No. SG-33106  
98-3-96-3-404

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Brotherhood of Railroad Signalmen  
**PARTIES TO DISPUTE:** (  
(CSX Transportation, Inc. (former Baltimore and  
( Ohio Railroad Company)

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):**

Claim on behalf of W.K. Cannon, R.L. Swetnam, and J.J. Ward for payment of an amount equal to the man-hours worked by outside employees in performing covered work on April 6, 1995, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used the outside employees to install new signal poles at Gambier Street in Mount Vernon, Ohio, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 15(95-214). BRS File Case No. 9803-B&O."

**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 April 6, 1995, Carrier used an outside contractor to remove a broken pole and set two new poles. Prior to 1974, such work had been performed by employees of Western Union Company, pursuant to a specific agreement between the parties. The Organization maintained that it inherited the work when Western Union stopped performing it. Carrier denied that the work had been reserved to Signalmen since 1974.

The record developed on the property contains conflicting assertions, but is barren of any evidence as to who performed this work on the property in the more than 20 years between Western Union's having ceased performing the work and the date of the incident that is the subject of the instant claim. The Organization has the burden of proof and bare assertions do not constitute evidence. Accordingly, the claim must be denied because the Organization failed to carry its burden of proof.

**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 22nd day of May 1998.**