

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32640
Docket No. SG-33338
98-3-96-3-854

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of T.P. Brady for payment of 16 hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Agreement S-069-87, when it used other than covered employees to perform wiring work for cases installed as part of the signal system at Ivorydale Junction, Ohio, and Laurens, South Carolina, and deprived the Claimant of the opportunity to perform this work. Carrier also violated Rule 59 when it did not provide notice of the disallowance of the claim within the time limits. Carrier’s File No. 15(95-274). General Chairman’s File No. 95-290-CO. BRS File Case No. 10026-C&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.

Claimant was assigned at the Consolidated Signal Shop when this issue arose. This dispute began with the filing of a claim on September 5, 1995, alleging that Carrier violated the Scope Rule when it purchased two pre-wired Harmon VHLC racks that arrived at the Savannah Signal Shop on August 4 and 17, 1995 with the relay plug boards and associated wiring already installed. General Chairman S. R. Ellison posited that the pre-wiring work performed by the manufacturer was work exclusively reserved for the employees of the Savannah Signal Shop by the Scope Rule. Therefore, the General Chairman contended that Claimant was entitled to 16 hours pay for the alleged loss of work and/or earnings opportunity in the wiring section of the Savannah Signal Shop.

By letter dated November 15, 1995, General Chairman Ellison appealed the claim to Carrier's highest designated officer seeking payment as presented on grounds he had not received a reply to the original claim and *arguendo* reiterating the Scope Rule claim on its merits. In one letter dated January 12, 1995, the Director Employee Relations denied that appeal, and two similar appeals, stating:

"Manager Signal Shop R. A. Nave has advised you that the Carrier's position in regard to the aforementioned claims has been firmly established and we agree with that advice. The Carrier has restricted itself in many ways, but it has not restricted itself in the right to purchase needed material and/or equipment. In this case, the Carrier has purchased from an outside vendor pre-wired racks which company forces install. Work in regard to the racks in question does not accrue to employees represented by you until equipment or material is delivered to the property. Once delivery of the purchased property arrives, all work associated therewith is performed by BRS employees."

Included as an exhibit to the Carrier's Submission was a September 14, 1995 letter which appears to be the Carrier's declination of the initial claim. For reasons known only to the Carrier, it failed to specifically refer to this letter during handling on the property. Its presentation for the first time before the Board comes too late.

Therefore, the claim is sustained as presented for violation of Rule 59 due to the Carrier's failure to establish on the property that it made a timely denial of the original claim. No opinion is expressed or implied regarding the merits of the Scope Rule claim. See Second Division Award 11927 as well as Third Division Awards 27692 and 30876.

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 20th day of July 1998.