

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32730

Docket No. SG-33750

98-3-97-3-223

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Georgia Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Georgia Railroad:

Claim on behalf of C.W. Stotts, F.S. Eddings, T.E. Lally, J.F. Williams, J.L. Irons, L.O. Thigpen and W.H. Bray for payment of 172.85 hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used an outside contractor to maintain the pole line by removing brush under the pole line between Mile Post 3.1 and Mile Post 119 from November 13 to December 28, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15 (96-126). General Chairman’s File No. FL-963S. BRS File Case No. 10236-GA.”

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.

Claimants assert that Carrier violated the Agreement, particularly the Scope Rule, when it used a contractor to perform the work of removing trees and brush from underneath Carrier's signal pole lines.

It is the position of the Organization that the work of removing trees and brush from underneath the signal lines constitutes preventative maintenance to the signal system and is reserved to Signalmen by the Scope Rule of its Agreement.

Carrier responds that the Scope Rule is specific in its definition of the classification of the type of work to be performed in the maintenance of the signal system, and that nowhere does it mention the removal of trees from the railroad right-of-way being recognized as signal work.

Review of the on-property handling fails to reveal that the Organization contends that the removal of trees and brush from the railroad right-of-way is reserved to Signalmen. Rather, the Organization's claim and argument is limited to the removal of trees and brush growing underneath the signal lines. This, the Organization says, constitutes preventative maintenance of the signal system and if not performed would allow trees and brush to grow into the signal wires interfering with proper operation of the signal system.

The Scope Rule of the parties' Agreement reads:

"This agreement covers rates of pay, hours of service and working conditions of all employees, specified in Article 1, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, dismantling, and repair of all signals, train-order signals, wayside or office equipment of communication facilities, interlocking plants, highway crossing protection devices, wayside train stop and train control equipment, centralized traffic control systems, spring switch mechanisms, line of road electrical facilities, shop repairing of relays, signals, switch magnets, motors, communication facilities, etc., bonding of track for signal and interlocking purposes, together with all appurtenances pertaining to the systems and devices outlined above, as well as all other work generally recognized as signal work.

No employees other than those classified herein will be required or permitted to perform any of the work covered by the scope of this agreement.” (Emphasis added)

The Board concurs with the Organization that the work of maintaining and repairing signals is work reserved to Signalmen. Thus, the question to be resolved is does the removal of trees and brush growing under the signal lines to avoid interference with power and signal functions constitute “maintenance” of the signal system? We are of the opinion that it does as it is absolutely necessary to proper operation of the signal system to keep trees and brush out of the signal lines.

Our opinion follows the principle adhered to by the Board over the years that the purpose of the work determines its assignment. (See Third Division Awards 19418 and 19525).

The on-property handling reveals that Carrier, in a previous Signal case, made the statement:

“There is no argument that in this case the work of clearing the right of way under the pole line is ‘preventative’ maintenance of the signal system and such work belongs to signalmen and assistant signalmen.”

Carrier attempted to explain away its statement in the on-property handling by asserting its position that the work being performed at the time belonged to Signalmen and Assistant Signalmen, but “did not expand to driving the truck” was an accurate statement.

In the Board’s opinion the Carrier’s explanation cannot overcome its clear and specific statement that the work of clearing the right-of-way under the pole line is preventative maintenance of the signal system and belongs to Signalmen and Assistant Signalmen.

Further support for the Board’s opinion in this case is found in Third Division Award 29569 involving this Carrier and the Brotherhood of Maintenance of Way Employes where the Board noted:

"In its initial response in the claim handling procedure, the Carrier noted that 'this work was done only under the pole line, which falls within the Signal Department not the Maintenance of Way.'"

Carrier's defense of this claim on the grounds that the work of removing trees and brush from under the pole lines is not exclusive to Signalmen falls of its own weight in the absence of evidence proving that contractors and others performed the preventative maintenance work of clearing trees and brush from under the pole lines to avoid interference with proper operation of the signals. Carrier had the burden to prove its assertion that the work was not exclusive to Signalmen, and it failed to bear its burden.

The Scope Rule provides that no employees other than those classified therein will be permitted to perform any of the work covered by the scope of the Agreement. Maintenance of signal lines is covered, and the clearing of trees and brush constitutes proper maintenance of the signal lines.

Having found a violation of the Scope Rule in the use of a contractor to clear trees and brush from under the pole lines to avoid interference with the power and signal functions, we now turn our attention to the Organization's request to compensate each Claimant 172.85 hours at the time and one-half rate for the violation.

The Organization asserts Claimants were available to perform the work. Carrier counters that Claimants were fully employed and lost no wages, therefore, were not available to perform the work.

The Organization does not dispute the fact that Claimants were fully employed during the period of the claim and lost no compensation resulting from the use of a contractor to perform the work, and no evidence was presented in support of the assertion that Claimants were available. The burden of proving availability rests with the Organization whether it be by rescheduling of the work or by overtime.

In comparable situations, the Board has held on many occasions that compensation of Claimants is not warranted. For example, Third Division Award 29202 held:

"While there is a basis for sustaining this claim, we note that Claimants were employed at the time. As this Board pointed out in Third

Division Award 26174, the position that no compensation is warranted where Claimants are fully employed and suffer no loss has long been applied in the industry.”

Third Division Award 29330 held:

“The Organization asserts that Claimants have lost a future work opportunity. Carrier denies this and asserts that Claimants were fully employed. The Organization does not dispute that the Claimants were fully employed on the Claim dates. The record contains no evidence of lost earnings by any of the Claimants.

In the absence of unusual circumstances, which are not present in this record, the entitlement to a monetary claim is a separate issue requiring independent proof of loss. Loss does not automatically flow from a finding of Agreement violation. No actual loss has been substantiated herein. Therefore, the monetary portion of the Claim is denied.”

Third Division Award 18305 held:

“In regard to damages, we adhere to the principle that damages shall be limited to Claimants’ actual monetary loss arising out of the Agreement violation and that this Board is not authorized to use sanctions or assess penalties unless provided for in the controlling Agreement. Since Claimants suffered no pecuniary loss in this instance, we will deny paragraph 2 of the Statement of Claim.”

The record before the Board contains no evidence of lost earnings by Claimants. Accordingly, we will follow the precedent established by the Board in this industry and deny the claim for compensation.

Accordingly, while the claim that the Scope Rule of the Agreement was violated is sustained, the claim for payment of 172.85 hours at the time and one-half rate for each Claimant is denied.

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 19th day of August 1998.