

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32800
Docket No. SG-33530
98-3-96-3-1112**

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 Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (former Seaboard Coast Line):

Claim on behalf of J.A. Cassidy and C.N. Breckenridge for payment of 28 hours each at the straight time rate, account carrier violated the current Signalmen's Agreement, particularly Agreement S-069-87, when it used other than covered employees to reclaim and renew signal heads and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 15 (96-39). BRS File Case No. 10156-SCL.”

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.

This dispute arises due to Carrier having an outside vendor, Burco Railroad Suppliers, strip 52 R2 Signal heads of light units, hoods, background shields and powder coat the heads and return the heads to Carrier's Savannah Signal Shop.

The Organization contends Carrier's action violates its Scope Rule and the consolidated Signal Shop Agreement (S-069-87).

It is the Carrier's position that stripping the heads of scrap material does not constitute a violation of the Agreement, and the powder coating of the heads was a process which could not be accomplished in the Signal Shop. Further, that the powder coating was a process it was exploring to prolong the life of signal heads.

The Scope Rule reads in pertinent part:

"(a) This Agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, installation, reclaiming, renewal, repair, inspecting, testing and maintenance, either in the shop or in the field, of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train control systems; car retarders and car retarder systems; highway grade crossing warning devices and systems; defect detector systems including hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, and flood; spring switch mechanisms when protected by signals or indicators; electrically lighted switch lamps; train order signals; blower, gas, electric or other types of automatic snow removing systems installed on power-operated switches; equipment; solar panels, sub-station, current generating and compressed air plants, their pipe lines and connections; all relays, printed circuit board and modules of track; painting; carpenter, concrete and form work in connection with the systems and devices covered by this agreement (except that required in building, towers and signal bridges); together with all appurtenances pertaining to the above-named systems and devices, as well as any other work recognized as signal work.

(b) No employee of 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 Consolidated Signal Shop Agreement (S-069-87) provides in pertinent part:

"1. All Signal Shop work currently being performed under the scope of the respective BRS schedule agreements at the C&O(CD)'s Signal Shop at Barboursville, West Virginia; the B&O's Signal Shop at Cumberland, Maryland; and the C&O(PM)'s Signal Shop at Saginaw, Michigan; and similar work being performed under the scope of the BRS schedule agreements for B&OCT at Chicago, Illinois and for the former WM at Hagerstown, Maryland will be transferred to and coordinated with work presently being performed in the coordinated SCL/L&N A&WP/CRR Signal Shop facility at Savannah, Georgia (which was previously coordinated pursuant to provisions of Memorandum Agreement of March 13, 1986) where all such work will thereafter be performed on a coordinated CSXT basis by Carrier employees represented by BRS under the scope of the Schedule Agreement between former SCL and BRS as amended in Appendix 'A', attached hereto. It is further understood that the work referred to herein will not be sent off the Carriers' properties."
(Emphasis added)

The Organization, as the moving party, has the burden of proving that the work of stripping R2 signal heads of light units, hoods, background shields and painting the heads is work reserved to Signalmen. The on-property record of handling convinces the Board that the Organization shouldered its burden of proving that the work is covered by its Agreement. This is so for several reasons.

First, the Organization presented six statements attesting to the fact that Signalmen employed in the Consolidated Signal Shop have performed the work since 1987, when the shop was established. This reveals that the work has been recognized as Signal work under the Scope Rule.

Secondly, the Scope Rule states that only Signalmen will be required or permitted to perform work covered by the Scope Rule.

Thirdly, the Consolidated Signal Shop Agreement provides that the work will be performed under the Scope of the Schedule Agreement, plus "It is further understood that the work referred to herein will not be sent off the Carrier's properties."

One part of the work not previously performed by Signalmen is the powder coating of the heads. On this issue, the on-property record of handling reveals that Carrier has a state-of-the-art paint room for the Signal Shop and employees with the expertise and equipment to do the work. All Carrier had to do was supply the powder. Carrier agrees that it had the facilities to perform the work, but asserted it did not have the safety features, such as the proper mask, to safely perform the work.

Carrier's contention that it did not have the safety features to safely perform the work constitutes an affirmative defense, and as such Carrier had the burden of proving that proper safety features were not available to it and/or were not economically justifiable. Carrier failed to bear its burden.

Carrier presented the Board with a number of prior Awards pertaining to the right to purchase equipment or component parts as persuasive to its position in this case. They are not on point because no purchase of equipment or component parts was involved. Here, Carrier took R2 Signal heads it owned and sent them off the property for stripping and powder application.

The Agreement was violated and the claim will be sustained.

AWARD

Claim sustained.

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 23rd day of September 1998.