

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32922
Docket No. SG-32838
98-3-96-3-174**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of C. B. Meadors, J. S. Smith and W. H. Smith for payment of five hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than covered employees to install signal equipment at Mile Post C-268.9 on February 15, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(95-146). General Chairman's File No. 95-158-01. BRS File Case No. 9693-L&N.”

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 February 15, 1995, the Carrier used an outside contractor to install poles which were utilized for only carrying signal wires. This claim followed.

This claim will be sustained. The Scope Rule covers "... installation ... of all ... power or other lines, with poles ... pertaining to interlocking and signaling systems." The installation work performed by the outside contractor therefore fell within the Scope Rule and should have been performed by covered employees.

As a result of the Carrier's improper use of an outside contractor, Claimants lost work opportunities. Claimants shall therefore be made whole at the straight time rate as requested in the claim.

The Awards cited by the Carrier do not change the result. Third Division Award 32479 involved an exclusivity dispute where the record indicated that Signal Department employees, Electricians, Communications employees and others had performed the work in the past. This is not an inter-craft dispute. Notions of exclusivity do not apply in cases where the Carrier contracts out scope covered work. See Third Division Award 31386 ("A myriad of Awards have concluded that, while exclusivity may be an appropriate test as to division of work among various crafts and classes of the Carrier's employees, it is not an appropriate requirement under the Agreement provision concerning contracting of work"). Third Division Awards 32525 and 17960 also did not involve a contracting dispute. Third Division Award 32596 was a contracting dispute, but appears to be fact specific. The evidence in that case showed that prior to 1974 employees of Western Union performed the work and there was no definitive proof that covered employees performed the work in the more than 20 years after that time. No similar arguments were advanced in this case. While several grounds were used to defeat the claim in Third Division Award 28739, the contracted work (construction of a microwave system) required special skills and expertise and did not have to be piecemealed. The work in this case - installation of poles - did not require such special talents and was work that fell under the Scope Rule (the poles were only used for signal wires). Finally, Third Division Award 21021 does not address similar language cited in this case by the Organization in the Scope Rule concerning poles.

AWARD

Claim sustained.

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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 November 1998.