

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33156
Docket No. SG-33501
99-3-96-3-1053**

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 Louisville and
(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 T.B. Rogers, S.A. Cox, W.E. Gunter, L.P. Grace, A.G. Smith, J.L. Blackwood Jr., C.C. Pierce Jr., W.E. Hinton Jr., R.P. Enfinger, R.L. Stansberry, K.L. Brown, L.D. Patterson Jr., G.L. Broadway, R.F. Bullock, T.J. Asher, J.L. Brown, C.E. Stewart, C.J. Kays, A.L. Brown, B.R. Rogers and E.J. Ward for payment of a total of 912 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 31, 32, 51 and the Scope Rule, when it utilized employees of an outside contractor and employees from System Signal Construction Gangs to perform repair work on the signal system from October 6 to October 13, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(96-16). General Chairman’s File No. 95-137-29. BRS File Case No. 9990-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.

The Organization filed this claim after the Carrier utilized employees of an outside contractor (Asplund Tree Service) and employees from two System Signal Construction Gangs to perform certain repair work on the signal system between October 6 and October 13, 1995. The record indicates that Claimants, Signalmen on Seniority District No. 6 (Montgomery, New Orleans and Pensacola Division), may have performed some of the work on this project, but their claim asserts exclusive jurisdiction. The claim avers that the Carrier violated the Agreement between the parties, particularly Rule 31 - SENIORITY, Rule 32 - SENIORITY DISTRICTS, Rule 51 - SYSTEM GANGS - SPECIAL RULE and the Scope Rule, by allowing anyone other than Seniority District No. 6 Signal employees to perform the work in question. Because of the alleged violations and "the loss of work opportunity," the Organization maintains that the Carrier should be required to compensate the Claimants payments totaling 912 hours at the time and one-half rate (684 hours by the System Signal Construction Gangs and 228 hours by the outside contractor).

In denying the claim, the Carrier maintained that the work under challenge was tree pruning and brush cutting generated by hurricane blowdowns and other weather-related damage and involved no signal wire splicing. On that basis, the Carrier contended that the work was not reserved to the Claimants by Agreement language or by custom, practice or tradition of exclusive system-wide performance. Emphasizing the weather aspect, the Carrier also declared that this was "emergency" work and invoked the emphasized language of Rule 51:

"(a) System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires, and slides." (Emphasis added)

The Carrier bears the burden of persuasion when it asserts the affirmative defense of "emergency." Something more than mere a mere representation is necessary to carry that burden and we are not persuaded that the emergency language of Rule 51 is applicable in the facts of record in this case. See Second Division Award 5484 and

Third Division Awards 13738 and 31428. However, the Claimants and the Organization still have the overall burden of persuasion on the claim of contractual entitlement to the performance of the work in question. In that connection, the Carrier's denial of the claim on its merits because tree and brush cutting is not reserved to Signal forces by Agreement language or historical exclusive performance is persuasive. A long list of Third Division decisions establishes ample precedent for denial of this claim. See Third Division Awards 20516, 20538, 21438 and 21924.

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 25th day of March 1999.