

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33898
Docket No. SG-33970
00-3-97-3-455**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of R. A. Farmer for 56 hours at the straight time rate (plus the skill differential) account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to work on communication cable at Conway Yard on October 10, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. SG-883/886/887, General Chairman’s File No. RM2853-2-496, BRS File Case No. 10319-CR.”

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 Board gave the International Brotherhood of Electrical Workers notice of the pendency of this dispute, but it chose not to file a Submission with the Board.

The instant dispute arose on October 10, 1995, when Carrier used IBEW employees to locate underground communication cables in and around Conway Yard, in preparation for installation of new cables. The employees are represented by the International Brotherhood of Electrical Workers. After the cables were located, Signal Department employees were used to install the new cables.

On the date in question, Claimant worked his regular assignment as a Maintainer C&S at Conway Yard. The Organization claimed the work performed by the IBEW employees and, without conceding that it violated the Agreement, Carrier compensated Claimant an additional four hours at his straight time rate.

The Organization contends that Claimant should be compensated for all work performed by the IBEW employees on October 10, 1995, not just the four hours that he was allowed. Carrier responds that, because Claimant was subject to the Hours of Service Act, he was limited to working a maximum of 12 hours on the date in question and no further compensation is warranted.

The Organization also filed a claim for similar work performed by IBEW employees on October 9, 1995. Carrier had compensated Claimant for four hours in addition to the eight hours he had worked that day at his regular assigned duties. In the claim for October 9, the Organization also maintained that Claimant was entitled to be paid for all work performed by IBEW employees and Carrier also contended that Claimant's total compensation for the day was limited to twelve hours by the Hours of Service Act.

In Third Division Award 33648, the Board denied the claim, stating:

"There is no dispute in the instant case that on the day in question the Claimant was working as a Signal Maintainer and that the ordinary and regular work as a Signal Maintainer would appear to be covered service. At a minimum, we are unable to conclude or infer otherwise without further description in the record. Because we cannot conclude to the contrary, and because the Organization bears the burden of proof in this matter, we conclude that the claim must fall as the Claimant's work on the

day in question fell within the confines of the Hours of Service Act and he was properly compensated accordingly.”

Based on our review of the record in the instant case, we find that the reasoning of Award 33648 applies with equal force. Accordingly, the claim will be denied.

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 24th day of January, 2000.