

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34170
Docket No. SG-34277
00-3-97-3-868**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company)**

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

- (A) Claim on behalf of C. L. Horne and S. P. Wright for payment of 264 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from September 23 through November 4, 1996, on the James River and Mountain subdivisions and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(96-350). General Chairman’s File No. 96-95-CD. BRS File Case No. 10409-C&O.**
- (B) Claim on behalf of C. L. Horne and S. P. Wright for payment of 264 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from January 10 through February 27, 1997, on the North Mountain subdivision and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(97-88). General Chairman’s File No. 97-35-CD. BRS File Case No. 10410-C&O.**
- (C) Claim on behalf of G. S. Brown, M. D. Honaker, and J. W. Estes for payment of 300 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly**

the Scope Rule, when it used a contractor to install new poles for the signal pole line during November of 1996 on the Allegheny subdivision and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 12(97-51). General Chairman's File No. 97-09-CD. BRS File Case No. 10411-C&O."

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.

During the period of September 1996 to February 1997 the Carrier's hired contractor, Hydra Construction Company, set poles on the Mountain, James River, North Mountain and Allegheny Subdivisions. Three essentially identical claims were made in the case at hand. The Organization's initial claim, made on November 15, 1996, was denied, as were subsequent claims initiated on January 24 and March 12, 1997. The denials were appealed in the usual manner.

The Organization contends that the poles had the sole function of supporting wires and cable used for the signal system, the maintenance and repair of which accrues to employees covered by the Agreement in accordance with the Scope Rule. The Organization asserts that the Carrier violated the Scope Rule when it used a contractor to install poles for the signal system as the poles are appurtenances of the signal system. The Organization further asserts that poles had once carried communication equipment, but it had been removed, thus the poles in question were being used exclusively for the wires and cables of the signal system when the work was completed. At issue in the case at hand is application of the Scope Rule.

“RULE 1 - SCOPE

This Agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair, and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including such work in signal shop, all other work generally recognized as signal work. It is understood the classifications provided by Rules 2, 2½, 3, 4, and 6 include all the employees of the Signal Department performing the work described in this rule.”

The Carrier contends that the Signal Department has never been entirely responsible for the maintenance of the pole line, which historically has been a communication pole line. Further, the Carrier asserts that the Signal Department has only been responsible for the maintenance of pole line cross arms and wires. Additionally, the Carrier states that while the contested work was being performed the Claimants were on duty and under pay, thus they did not lose work and were not entitled to any pay for work performed by the contractor.

At issue in the case at hand is whether the work in question is exclusively reserved by Agreement, tradition, or past practice to the Claimants. The language of the Scope Rule does not establish that the work in question is the exclusive work of the Signal Department. Nor is there evidence on the record that the work in question has been accomplished solely by the Signalmen’s craft. Accordingly, the Board concurs with the Board’s findings in Third Division Award 33384 which states in pertinent part:

“Because of the less than specific language found in the Scope Rule, the Organization has the burden to prove that the claimed work accrues exclusively to its members. Bare assertions without more do not constitute proof (Third Division Award 32596). Therefore, the claims as presented must be and hereby are denied for lack of proof of exclusive performance by the Claimants.”

This decision is also consistent with the Board’s decisions in Third Division Awards 32479, 32501, 32525 and 32596 involving the Organization and various CSXT component roads.

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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 20th day of July, 2000.