

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35046  
Docket No. SG-35693  
00-3-99-3-635**

**The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.**

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

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):**

**Claim on behalf of W. Halcomb, D.L. Martin, F.R. Moore, D.L. McClure and H.L. England for a total of 1020 hours straight time and 430 hours time and one-half to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized an outside contractor to perform covered signal work by replacing and repairing signal pole line between MP BC170.0 and MP BC7.0, from April 29 through May 29, 1998, and denied the Claimants the opportunity to perform the work. Carrier’s File No. 15(98-326). BRS File Case No. 10971-B&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.**

**On July 17, 1998 the Organization filed this claim alleging the Carrier violated the Scope Rule when it used an outside contractor to install poles, wires, cross arms and tied wires from MP BC 170.0 to MP BC 7.0 between April 29 and May 29, 1998.**

**The Carrier argues that the Claimants do not have the exclusive right to the work performed. It also argues that the time claimed is not supported by any facts.**

**Both parties cited numerous Awards in support of their respective positions. As to the work of installing new poles, Third Division Award 32596 resolving a dispute between the same two parties held:**

**“The record developed on the property contains conflicting assertions, but is barren of any evidence as to who performed this work on the property in the more than 20 years between Western Union’s having ceased performing the work and the date of the incident that is the subject of the instant claim. The Organization has the burden of proof and bare assertions do not constitute evidence. Accordingly, the claim must be denied because the Organization failed to carry its burden of proof.”**

**This case is similar in that the Organization has again failed to prove that BRS-represented employees have the exclusive right to install signal poles.**

**It is clear that the other work performed by the contractor is covered by the Scope Rule. The Carrier failed to argue that it was not required to partially contract out the work. During the handling of the claim on the property, the Carrier challenged the number of hours claimed by the Organization. The Organization never responded. Because there is no way the Board can determine the number of hours involved in covered signal work no pecuniary award of damages will be made.**

### **AWARD**

**Claim sustained in accordance with the Findings.**

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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 25th day of October, 2000.**