

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35361
Docket No. SG-34954
01-3-98-3-724**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf on P.J. McCoy and A.N. Edds, Jr. for payment of four hours each at the straight time rate account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor to assemble and wire a power service pole for installation at Howell's Mill Milepost CA491.6, on the Kanawha Subdivision. Carrier's File No. 15(97-228). General Chairman's File No. 97-120-CD. BRS File Case No. 10802-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.

The Carrier purchased a 400 ampere power service pole from a contractor, Burco Distributors. The power service pole provides power to the Carrier's signal system. On July 29, 1997, the power pole was installed by the Claimants at Howell's

Mill on the Kanawha Subdivision. On July 29, 1997, the Claimants were assigned to Signal Construction Gang 7G15 on the Kanawha Subdivision.

On August 19, 1997, the Organization submitted a claim on behalf of the Claimants for four hours each at the straight time rate of pay. The Organization argued that the maintenance, repair and construction of signals and their appurtenances, such as a power service pole that is used exclusively to provide power for signal equipment, is work that is covered by the Scope Rule of the parties' Agreement. Therefore, according to the Organization, the Claimants should have been assigned to construct the power service pole that was purchased from Burco Distribution.

On September 11, 1997, the Carrier denied the claim insisting that it is common practice for outside vendors, such as Burco Distributors, to deliver finished products to CSXT property to be installed by CSXT employees. This does not violate the Scope Rule of the Signalmen's Agreement, in the Carrier's opinion. In any event, the Carrier contends that the Claimants are not entitled to additional compensation because they did not lose any wages.

On November 14, 1997, the Organization appealed the claim that the Carrier disallowed on September 11, 1997. On January 13, 1998, the Carrier denied the appeal asserting that it was untimely because it was beyond the 60 day time limit for appeals mandated by Rule 59 1. (b) of the Agreement. The Organization never responded to the Carrier's time limit contention.

It appears that the Organization failed to appeal the claim within 60 days from receipt of notice of disallowance as required by Rule 59 1. (b) of the parties' Agreement. Therefore, according to the express terms of Rule 59 1. (b), the matter shall be considered closed without establishing a precedent or waiver in other similar claims or grievances.

Notwithstanding, numerous Awards between these parties have held that the Carrier has the right to purchase pre-wired signal devices from an outside vendor for installation by CSXT employees without this constituting a violation of the Scope Rule.

**Form 1
Page 3**

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AWARD

Claim dismissed.

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 March, 2001.