

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35465
Docket No. SG35454
01-3-99-3-357**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim on behalf of A.B. Lieto and L.T. Miller for payment of five hours and 20 minutes at their time and one-half rates, and R.G. Robertson, for payment of 13 hours and 20 minutes at his time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to remove and install radios on locomotives, on January 12, February 2, 12, 13, 16, 25, March 2, 3 and 5, 1998. Carrier’s File No. SG-15(98-225). General Chairman’s File No. 98-55-PM. BRS File Case No. 10955-C&O(PM).”

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 Claimants in this case were respectively assigned as Electronic Repairman, Livonia, Michigan; Electronic Maintainer, Livonia, Michigan; and Communication Inside Lineman, Saginaw, Michigan.

On the dates enumerated in the Statement of Claim, the following actions were performed by other than Signalmen:

January 12	A Machinist at Flint, Michigan, moved a radio from one locomotive to another.
February 2	An Engineer at Dearborn, Michigan, removed a radio from a locomotive and took it to the yard office.
February 12	A “yard crew” at Saginaw, Michigan, moved a radio from one locomotive to another. The crew member who actually performed the work is not identified by the Organization..
February 13	A “yard crew” at Saginaw, Michigan, moved a radio from one locomotive to another. The crew member who actually performed the work is not identified by the Organization.
February 16	An Engineer at Dearborn, Michigan, moved a radio from one locomotive to another.
February 25	A “road crew” at Saginaw, Michigan, moved a radio from one locomotive to another. The crew member who actually performed the work is not identified by the Organization.
March 2	A Trainmaster at Wayne, Michigan, moved a radio from one locomotive to another.
March 3	A Machinist at Flint, Michigan, moved a radio from one locomotive to another.

March 5 A “yard crew” at Dearborn, Michigan, moved a radio from one locomotive to another. The crew member who actually performed the work is not identified by the Organization.

The Organization argued that each of these actions constituted a violation of the Signalmen’s Scope Rule which, in pertinent part, reads as follows:

**“COMMUNICATION
RULE 1**

This Agreement covers rates of pay, hours of service and working conditions of all employees specified in Communication Rules 101, 103, 104, 105 and 106, engaged in the installation and maintenance of communication facilities or equipment and performing work generally recognized as communication work, including employees in the United States classified under Communication Rule 104(b) of this Agreement. This Agreement shall not be construed as granting to employees coming within its scope the exclusive right to perform the work of installing and maintaining other than railroad owned facilities or equipment.”

The Carrier contended that the Scope Rule is general in nature and does not reserve the handling of locomotive radios exclusively to Signalmen. The Carrier further asserted that, in any event, the nature of the work here involved was a minor task easily and quickly performed by anyone and is therefore de minimis in nature.

The Organization countered with the argument that the occasional performance of a task by someone other than a Signalman might be considered as de minimis, but the repeated performance of work tasks reserved for Signalmen creates a situation that is beyond the de minimis principle.

From the Board’s review of the circumstances involved in this dispute, it is our conclusion that the Scope Rule is not specific in its language in relation to the handling of radios from one locomotive to another or from a locomotive to a yard office. The Board considered the Organization’s argument concerning the need to check and test various aspects of such radios when placing them on a locomotive, but does not find any evidence that such checking and/or testing was, in fact, performed. It is apparent from

the evidence of record that the task performed by the individuals who handled the radios was simple in nature and was easily and quickly performed. Therefore, the de minimis principle is applicable. The fact that more than one de minimis action occurred does not, per se, cancel or otherwise negate the de minimis nature of the individual tasks.

There has been no proof advanced to support the Organization's position relative to exclusive right of performance of the work here involved. No violation of the Scope Rule is found and the claims are denied.

Support for the position expressed and conclusions reached in this case is found in Second Division Awards 9083, 12238 and 12476, as well as in Third Division Awards 22289, 26671 and 35464.

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 **22nd** day of May, 2001.