

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35544
Docket No. SG-35370
01-3-99-3-267**

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (former Louisville & Nashville Railroad):

Claim on behalf of R. D. Hamilton, M. D. Grubbs, R. D. Haynes, R. M. Schochlee, E. L. McDowell, C. T. Brasher, and D. R. Clary for payment of a total of 1,040 hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 2, 3, 4, 7, 31 and 32, when it used outside forces to remove trees and brush from the signal pole line Mile Post 7 to Mile Post 96, from February 20 to April 14, 1998, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(98-181). General Chairman’s File No. 98-71-05. BRS File Case No. 10770-L&N.”

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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute and chose to file a Submission with the Board.

The general principles governing resolution of the brush cutting disputes currently under consideration by the Board are set forth in detail in Third Division Award 35529. In sum, (1) the Organization filing the claim has the burden to demonstrate a violation of the Agreement; (2) brush cutting in general along the Carrier's right-of-way is BMW scope covered work; (3) the cutting of brush that interferes with signal or communications lines and related equipment is BRS scope covered work; (4) the cutting of brush under the pole line that does not interfere with signal or communications lines and related equipment falls under BMW Scope Rules; (5) where outside forces are used, the relevant contract provisions governing the use of such forces will be applied and assertions of the need to show exclusive performance of the work will not defeat an Organization's claim; (6) with respect to asserted emergencies, the Carrier has the burden to demonstrate the existence of an emergency, which requires it to show the existence of an unforeseen combination of circumstances that calls for immediate action, but where ordinary track maintenance could have prevented the situation, no emergency exists; (7) where Agreement violations have been demonstrated, adversely affected employees will be made whole at the appropriate contract rate on the basis of lost work opportunities and irrespective of whether the employees were working on the dates of the demonstrated violations; and (8) where violations have been demonstrated, the disputes will be remanded to the parties for determination of the number of hours attributable to the improperly assigned work taking into account the specific type of work involved, with the Board retaining jurisdiction to resolve disputes over remedies.

In this case, the Carrier used an outside contractor to cut under the pole line where tree limbs were interfering with signal wires and causing signal failures and delays as a result of the tree limbs extending into the signal code line and signal line wire. Those assertions were not refuted.

The record sufficiently shows that the brush extended into the signal and communications lines. Cutting brush that interferes with signal or communications lines is BRS scope covered work.

In accord with the principles set forth in these cases, the claim has merit. The Claimants were deprived of work opportunities and will accordingly be made whole for those lost opportunities at the appropriate contract rate. The matter is remanded to the parties to determine the number of hours of work performed by the contractor specifically attributable to cutting brush that interfered with signal or communications lines and related equipment exclusive of hours of other general cutting of brush along the right-of-way. The Claimants will be compensated based on those hours.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of July, 2001.