

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37238
Docket No. SG-37670
04-3-03-3-15**

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of R. L. Cooper, for one hour at the time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement particularly the Scope Rule, when it allowed an outside contractor to remove a signal and a signal foundation on October 7, 2001, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 02-0039. General Chairman's File No. SCL-02-21-02A. BRS File Case No. 12417-SCL.”

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 October 7, 2001 the Carrier directed the Claimant's signal construction team to remove a dead signal from its location. Following a failed second attempt by the signal force crew to remove same, the Carrier authorized a Track Hoe Operator, who was working in the vicinity, to remove the dismantled signal mast from its foundation.

In his initial claim, submitted on December 7, 2001 the Claimant asserted the following:

"Crew of 4 men outside contractor removed old signal and foundation from right away. Due to lack of Signalmen to perform task as quickly as requested by project engineer of maintenance."

The Carrier denied the Organization's February 20, 2002 appeal, premised, in pertinent part, upon the following:

"Our review of the facts in this case reveals that on October 7, 2001 the Carrier directed the Claimant's signal construction team to remove a dead signal from its location. However, the location was not accessible to team's boom truck because of tight clearances and the probability of damaging or immobilizing the boom truck. Therefore, the Carrier authorized a track hoe operator, who was working in the vicinity, to remove the dismantled signal mast from its foundation. This task took less than 15 minutes for the operator to complete. Moreover, the operator performed no work on the signal itself. He merely lifted the mast from the signal foundation and set it on the ground.

Given, these circumstances, the Carrier fails to see where it would have violated the agreement. Indeed, the Claimant himself was present at the site during the brief period of time in which the track hoe operator removed the mast and then placed it on the ground. Tasks of this nature must be considered de minimus work at best. Furthermore, the Organization's request for punitive damages for work performed during normal business hours is clearly misplaced. In light of the safety issues in this case and the fact that the work was of an extremely short duration, the Carrier's decision to allow the track hoe operator to remove the signal from its foundation did not violate the Agreement."

A June 27, 2002 conference was held, however, no additional information or arguments were presented by the Organization that induced the Carrier to reconsider its earlier denials.

A review of the record demonstrates that the Claimant's signal construction crew was given two opportunities to remove a nonfunctional signal mast but was unable to accomplish same. Specifically, the crew truck became stuck in the soft ground several feet from the desired location. The contractor, who was already working at the location with a track hoe, laid the signal out of the way until the Claimant's crew could get its boom truck into position. Thereafter, the foundation was bulldozed over, because it was no longer needed, and Signalmen assisted in the mast removal by disconnecting the signal cable and removing the bolts that held the mast to the stand.

In light of the Carrier crew's inability to lay the signal out of the way, the Carrier had no alternative but to use the contractor to accomplish the necessary task. There is no dispute that the contractor was already working at the site and that the task in dispute took less than 15 minutes to complete. Furthermore, no BRS-represented employees were adversely affected as a result of the contractor's de minimus contribution to the project. Therefore, the claim must be denied.

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 27th day of October 2004.