

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37239
Docket No. SG-37700
04-3-03-3-34

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. H. Phillips, 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 foundation that was to be re-used at Miami Plantation on October 7, 2001, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 02-0044. General Chairman's File No. SCL-03-04-02A. BRS File Case No. 12422-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.

The Claimant in this case is R. H. Phillips, who, at the time this dispute arose, was assigned to the position of Signalmen. A review of the record demonstrates that on October 7, 2001, the Claimant's signal force was twice assigned the task of removing a nonfunctional signal mast, but twice failed to accomplish same. Specifically, due to soft ground, the Claimant's crew was unable to move its boom truck next to the signal mast to remove it from its foundation. Therefore, the Carrier asked a contractor, who was already working at the location with a track hoe, to lay the signal out of the way until CSXT personnel could get their boom truck into the location. 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 his November 21, 2001 claim the Local Chairman asserted that the Carrier violated the Scope Rule on Sunday, October 7, 2001 when a contractor removed a signal and its foundation at Miami Plantation on the FBU.

The Carrier denied the Organization's March 4, 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, 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."

This claim is indistinguishable in any material aspect from the companion claim in Third Division Award 37238, also before the Board, with the only difference being the named Claimant. For reasons set forth more fully in Award 37238, this claim likewise is 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.