

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37373
Docket No. SG-37449
05-3-02-3-505

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore and
(Ohio 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 M. K. Mohler, C. W. Bell, L. D. Goff, R. L. Cale, G. L. Cathell, Jr., and S. N. Woods, for payment of a total of 1680 hours at the Signalmen's straight time rate to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used outside forces between MP BA 232 and MP BA 254.3 to remove trees and brush from the signal pole line from April 30 through May 25, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(01-0140). General Chairman's File No. CUM-1-09-1. BRS File Case No. 12119-B&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 Organization filed the instant claim on the Claimants' behalf contending that the Carrier violated the Scope Rule when it used outside forces to perform covered signal work.

The Organization initially contends that the Carrier violated the Scope Rule when it allowed Asplundh Tree Service to trim brush and trees that had grown into the signal pole line wires on the Mountain Subdivision between MP BA 232 and MP BA 254.3. The Organization asserts that it is undisputed that eight contractor employees worked ten-hour days from April 30 through May 25, 2001, and that the purpose of this work was to alleviate related problems in the signal system caused by trees and brush growing into the pole line and to eliminate overtime associated with the line problems.

The Organization acknowledges that Signalmen do not have an exclusive right to all tree and brush removal, but when trees and brush interfere with signal or communication lines and related equipment, that is BRS Scope-covered work. The Organization asserts that the trees in question were removed from the signal wire lines, so there can be no question that this work was done solely for the maintenance of the signal system. The Scope Rule specifies that maintenance of the signal system, including the wayside pole line, is reserved to employees covered by the Agreement. The Organization emphasizes that this situation does not fall within the emergency exception contained in the Scope Rule. Moreover, the Board repeatedly has held that where, as here, the purpose of the work is for the safe operation of the signal system such work is reserved to Signalmen. The Organization argues that the clear and unambiguous terms of the Scope Rule, as well as the purpose for which this work was performed, establish beyond question that the Carrier violated the Agreement when it diverted this work to the contractor and deprived the Claimants of the opportunity to perform it.

The Organization then addresses the Carrier's assertion that the Organization was required to demonstrate how much brush was in the pole line or the amount that interfered with the signal system. The Organization maintains that the Board's Awards do not attempt to distinguish how much brush must be in a pole line before the work is covered signal work. Instead, the Board has found that the cutting of brush

that interferes with signal or communication lines and related equipment is Scope-covered signal work.

The Organization goes on to assert that there is no merit to the Carrier's assertions regarding the requested remedy. It is well established that when employees are deprived of the opportunity to perform work reserved to them under the Agreement, the employees lose the wages they would have earned for doing that work, and they are entitled to recover for such loss. The Organization emphasizes that the use of a contractor to perform the maintenance and repair work on the signal pole line deprived the Claimants of a valuable work opportunity that accrued to covered employees under the Agreement. The Claimants therefore are entitled to compensation for the improper diversion of this work.

The Carrier initially contends that the work of cutting brush on the Carrier's right-of-way is not exclusively reserved to any craft, including the Signalmen's craft, by Agreement or practice. The Carrier argues that any craft or outside contractor may provide this service. The Carrier asserts that there is no contractual support for the Organization's position that an employee covered by the Agreement must be used to perform this work. The Scope Rule, which is general in nature, does not specify which work functions are exclusively within the jurisdiction of the craft.

The Carrier maintains that absent the specific mention of brush-cutting work under Agreement provisions, the Organization bears the burden of showing that system-wide exclusive rights to such work exist by custom, tradition, and practice. There is no evidence in the record, however, that makes such a showing. The Carrier argues that the Organization's interpretation of the Scope Rule is overly inclusive and restrictive. Moreover, portions of the work in the Signal Department, including work directly involving signal equipment, are not exclusively performed by employees covered by the terms of the Agreement.

The Carrier then emphasizes that its position has been upheld by the Board. Because tree and brush cutting still is not reserved to signal forces by Agreement language or historical exclusive performance, the instant claim should be denied. Absent a specific work Rule provision or evidence of past practice, brush cutting along the Carrier's right-of-way involving the pole line is not reserved to the Claimants. The Carrier points out that there is no evidence that the Claimants ever performed this type of work and all Claimants were on duty, performing their assigned work, and under

pay on the dates in question. The Carrier asserts that the work at issue properly can be performed, without penalty, by a variety of employees, including outside contractors.

The Carrier maintains that the Organization failed to prove that the Agreement was violated when the Carrier used an outside contractor to cut brush, as outlined in the claim. The record is completely devoid of any specific Agreement language or contract provision supportive of the Organization's position in this matter.

The Board reviewed the record and finds that the Organization failed to meet its burden of proof that the brush that was cleared by the outside forces was interfering with the signal lines. Therefore, the claim must be denied.

In order for the Organization to prevail on a claim of this kind, it must show with sufficient evidence that the brush and trees that were cleared by the outside contractor in some way were interfering with the signal lines. The Board ruled in Third Division Award 35534 that if the brush extended into the signal and communication lines, then the cutting of that brush was BRS scope-covered work. In this case, there was simply insufficient evidence to show that the brush that was removed was interfering with the signals. See Third Division Awards 37237, 27725 and 21131. For all of the above reasons, 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 24th day of February 2005.