

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37463
Docket No. SG-37662
05-3-03-3-3

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.)

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 E. A. Jarvis, R. A. Blacketer and T. J. Blakely, for 12 hours each at their respective time and one-half rates of pay, account Carrier violated the Current Signalmen's Agreement, particularly the Scope Rule and Rule 10, when it allowed an outside contractor to cut brush that was obstructing the line-of sight view of a signal on October 18 and October 19, 2001, and deprived the Claimants of this work opportunity. Carrier File No. 15(02-03434). General Chairman's File No. 01-25-6. BRS File Case No. 12440-C&EI.”

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, but chose not to file a Submission with the Board.

The named Claimants in this case, E. A. Jarvis, R. A. Blacketer and T. J. Blakely, were assigned to a District Signal Gang on the former C&EI property and were covered by the terms of the Chicago and Eastern Illinois Railroad Company Agreement. On November 27, 2001, the Organization presented this claim on their behalf, contending that the Carrier violated the C&EI Signalman's Agreement, particularly the Scope Rule and Rule 10, when it allowed employees of an outside contractor (Koberstein Trucking, Inc.) to perform certain brush cutting and tree pruning work on October 18 and 19, 2001. It was contended that the employees from Koberstein Trucking, Inc., "cut brush and trees that were blocking the sight of the signals as viewed from an approaching train."

In denying the claim, citing prior Awards of the Board, the Carrier asserted that work of clearing brush and trees along the right-of-way, even if, arguendo, the vegetation interfered with the line of sight of a signal from a train, was not the equivalent of removing such obstructions from signal poles or line wires. In addition to claiming exclusivity in the performance of the claimed work, the Organization maintained that even those prior Board decisions supported its claim that the work in this particular case "belonged" to the BRS.

To say that the issues presented in the instant claim are not matters of first impression would be a gross understatement. Third Division Awards 35529, 35536, 35543, 35544, 35545 and 35546 set forth a carefully considered and exhaustive analysis, which the Board summarized in Award 35529, the lead case, as follows:

"In sum then, in general and as a guide to the parties, in resolving these disputes, we will apply the following principles: (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 applying the above-listed principles to the facts of record in Award 35543, involving these same Parties, the Board held as follows:

"In this case, according to the Organization, the Carrier used a contractor to cut trees that were interfering with the signal wires under the pole line. According to the Carrier, the contractor was used to cut trees and undergrowth from the right-of-way.

The burden in this case is on BRS to demonstrate that the work performed by the contractor was the cutting of brush that interfered with signal or communications lines and related equipment. We cannot sufficiently determine from this record that the brush had grown into the signal or communications lines. At best, the record is in conflict. A record in conflict on the material facts is insufficient to meet the Organization's burden." (Emphasis added.)

Application of the guiding principles set forth, supra, to the facts of record in the present claim leads the Board to conclude that the Organization failed to meet its burden of proof. Accordingly, 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 19th day of April 2005.