

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37519
Docket No. SG-37937
05-3-03-3-361

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville &
(Nashville 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 G. V. Timmons, B. K. Rodgers and P. M. Weber, for 73.33 hours each at their respective time and one-half rates of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 1 (Scope) and Rules 31 and 32, when on August 12, 2002 through August 22, 2002, it used an outside contractor to cut trees and brush where maintenance of such had been deferred. The contractor assisted in the removal of trees and brush that was blocking the preview of signals at several different signal locations on District 5, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 02-0141. General Chairman's File No. 02-178-3. BRS File Case No. 12636-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.

The Claimants in this case were assigned to District Signal Gang No. 7M39 headquartered at Birmingham, Alabama. The claim as outlined above was presented by the Organization on behalf of the Claimants contending that the Carrier violated Rules 1, 31 and 32 of the Agreement when it used employees of Asplundh Tree Expert Company to cut trees and brush that was allegedly blocking the view of signals at several unspecified locations on the Claimants' work district between Montgomery, Alabama and Brentwood, Tennessee.

Rule 1 of the Agreement is the Scope Rule. It outlines and delineates the rates of pay, hours of service and working conditions of BRS-represented employees.

Although Rule 3 - SENIORITY and 32 - SENIORITY DISTRICTS are mentioned in the STATEMENT OF CLAIM, they are not addressed or otherwise argued by the Organization in its progression of the claim. It is, therefore, concluded that neither of these Rules has any significance in this dispute.

The Organization's contention is that the Carrier violated the Scope Rule when Asplundh Tree Expert Company was employed to cut trees and brush that was interfering with the view of wayside signals. The Organization contended that the Carrier was aware of the developing situation but had deferred the use of Signalmen to perform the required maintenance in the area. It argues that the Scope Rule specifically covers the maintaining of interlocking systems, devices, signals and signaling systems together with all appurtenances pertaining to these systems and devices. It concludes that the work of maintaining the signal devices is work that accrues to Signalmen and the use of an outside contractor as was done in this case deprived the Claimants of work that properly accrued to them. The Organization cited with favor the opinion expressed in Third Division Award 35529 which held, in pertinent part, as follows:

“. . . (3) the cutting of brush that interferes with signal or communication lines and related equipment is BRS scope covered work;”

In this case, the Organization contends that the “related equipment” referenced in Award 35529 clearly includes signals governing train movements and the removal of trees and brush which obstructed the view of those signals was work that should have been performed by Signalmen.

From the case record as developed on the property, between the dates of August 12 through August 22, 2002, Asplundh Tree Expert Company personnel cut and cleared trees and brush along the Carrier’s right-of-way.

At no point during the on-property handling of the claim did the Organization mention or otherwise identify the locations of the wayside signals that were allegedly blocked by the trees and brush.

At no time during the on-property handling of the claim has the Organization contended that Asplundh Tree Expert Company was employed exclusively removing trees and brush that was blocking the view of wayside signals.

At no time during the on-property handling of the claim had the Organization contended that all tree and brush removal was covered by its Scope Rule.

This dispute is not a case of first impression. On this property, involving these same parties, the Board previously held that the use of an outside contractor to cut trees and brush was not a violation of the Organization’s Scope Rule. Third Division Awards 33156, 35548 and 37237 have so held. In recent Third Division Award 37373 involving these same parties, the Board correctly concluded as follows:

“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."

There is no evidence in this case that the removal of trees and brush by Asplundh Tree Expert Company personnel caused any violation of the Agreement. The Carrier's denial of the claim as presented by the Organization is persuasive. Therefore, this claim 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 24th day of May 2005.