Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40108
Docket No. SG-40587
09-3-NRAB-00003-080419

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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. (formerly Louisville & Nashville):

Claim on behalf of M. R. Anderson, J. W. Arnold, C. T. Brasher, B. Cundiff, Jr., A. D. Daffron, T. R. Jarvis, E. L. McDowell, B. J. Siebe, J. E. Wade and C. M. Whitsell, for 152 hours each at their respective time and one-half rates of pay and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particuilarly Rule 1 (Scope), Rules 16, 31, 32 and the Letter of Agreement dated August 18, 2005, when it used a contractor (Interail) to remove signal poles, lines and fixtures between Mile Posts 00H324.6 to 00H296.0 on the Henderson Subdivision on L&N Seniority District No. 7 from October 2, 2006 through November 10, 2006 and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(07-0006). General Chairman's File No. 06-71-8. BRS File Case No. 13855-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 instant dispute challenges the Carrier's use of an outside contractor to dismantle and remove pole line materials on the territory specified in the above Statement of Claim. From the record before us, it has been chosen as a lead case among several that apparently raise the same issues.

According to the claim, on 13 days between October 2 and 20, 2006, the contractor cut down poles, as well as rolled up wiring, and over 15 days between October 23 and November 10, 2006, the contractor removed 582 poles, wires, and appurtenances. It is undisputed in the record that the work in question involved the removal of a wholly abandoned signal system pole line.

Distilled to its essence, the Organization contends that the work involved was covered by the Scope Rule of the applicable Agreement, which was confirmed by the content of a Letter of Understanding and Agreement dated August 18, 2005 ("Letter"). The Carrier, to the contrary, contends that the work was not covered by the applicable Scope Rule and the Letter has no application to the instant dispute.

Interestingly, in their claim-handling correspondence on the property, both parties cited prior Third Division Awards in support of their respective positions. Oddly, however, the Organization did not include either of the Awards it cited in its Submission to the Board. Similarly, the Carrier cited seven Awards, but only included one of them in its Submission. That one Award involved a different carrier and dealt with an "as is, where is" sale. The instant record does not include any contention by the Carrier that the work in dispute was performed pursuant to such a sale.

According to the record, the Letter dealt with situations where the Carrier had non-functioning wire still on an active pole line with live wires. Arguably, the removal of the non-functioning wire could be construed as "maintenance" of an active pole line and come within the wording of the Scope Rule. It is understandable, therefore, that the parties would have developed the Letter to prevent potential claims associated with these locations where dead wire was commingled with active wire.

Although the text of the Letter does not clearly describe the limits of its scope or purpose, its intended application does emerge from a careful reading of the on-property record. The Letter says only this about its application:

> "This has reference to the removal of non-functioning line wire on pole lines on the CSXT system.
>
> * * *
>
> L&N signal forces, as appropriate, will be assigned to cut down all non-functioning wires at the locations assigned." (Emphasis added)

On the property, the meaning of the "locations assigned" reference was disputed, but there was no dispute whatsoever about the reason the Letter came into being. The Organization's January 25, 2007 appeal letter contains the following paragraph to provide clarification:

> "In 2005 the Carrier requested that the organization *{sic}* work with them because a 15 year old boy had been killed when he grabbed a so-called dead wire hanging down from a pole. It was wrapped in live wires still on the pole. The Organization agreed to allow an outside party to pick up and remove this wire from the property after the L&N District employees cut it down. There was no discussion about the removal of poles or other wires at this time." (Emphasis added)

In connection with the foregoing, the Organization asserted that the locations in dispute here were listed as locations where the Letter was to apply. However, this

was effectively refuted by the Carrier. The Carrier contended that the Letter applied only where live wires and non-functional wires were present and commingled on the same pole line. In its March 23, 2007 reply on the property, the Carrier's letter stated, in pertinent part, as follows:

* * *

> "You were provided a list identifying the locations of the commingled lines at issue and the locations where the 'wholly' abandoned line that was being removed here was not on that list because it was not identified as a commingled location."

After the Carrier refuted the Organization's assertion about the locations where the Letter was to apply, it became the Organization's burden to provide evidence to support its position. On the record before us, the Organization never provided any listing to establish that the locations in dispute were encompassed within the Letter. Accordingly, we must find that the Organization failed to prove this critical fact. As a result, we must find that the Organization has not proven that the Letter applied to the instant dispute.

The foregoing discussion brings us to the actual text of the applicable Scope Rule. It reads, in pertinent part, as follows:

> "This agreement covers the rates of pay, hours of service and working conditions of all employes . . . engaged in the construction, installation, repair, inspecting, testing and maintaining of all . . . power or other lines, with poles, fixtures, conduit, systems, . . . pertaining to interlocking and signaling systems . . . as well as any other work generally recognized as signal work."

As written, the Scope Rule does not specifically state that it includes the removal of pole lines. Instead, the wording of the Scope Rule appears to limit its reach to the actual installation, repair, inspection, testing and maintenance of an active pole line. Therefore, the work in dispute here would not be covered unless it is encompassed by the general reference to "work generally recognized as signal work." As to this general recognition language, the Scope Rule becomes a general

Rule. Accordingly, we must apply the principles that have been well-established by the Board to interpret a general scope Rule. To establish scope coverage in the presence of a general scope Rule, it must be shown that the employees have customarily and historically performed the work in dispute. The instant record is devoid of such evidence.

Given the foregoing discussion, we are compelled to find that neither the Letter nor the Scope Rule has been shown to reserve the disputed work to BRS-represented employees. Accordingly, we must also find that the violation of the Agreement alleged by the Organization has not been proven.

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 November 2009.