

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19418
Docket Number MW-19111

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when on August 1, 11, 12, 13, 14, 15 and 19, it assigned other than Track forces to perform the work of cutting right-of-way under signal and telephone lines at Shannon, Helena and Alabaster, Alabama. (System File 1-16/E-304-12)

(2) Section Foreman L. M. Atchison and Section Laborers J. Ross, D. E. Thornburg and A. Glen each be allowed fifty-six (56) hours' pay at their respective straight time rate because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: On the dates and at locations specified in the claim, Carrier assigned employes of the Telephone and Signal Departments to cut brush and undergrowth located under Carrier's communication lines which were endangering efficient operation of communication carried thereon.

The Organization contends that the cutting of brush and clearing of right-of-way is work reserved by Agreement and understanding to employes of Carrier's Track Department. Carrier contends that such work is not reserved exclusively to Track Department employes as Telephone and Signal Department employes have cut brush and trees over the entire System, that interfered with communication lines; also, that eradication of weeds and undergrowth around communication equipment boxes has been the responsibility of that department.

A careful study of the record herein and an examination of Awards on the question find work involved in the instant dispute falling in a "twilight zone" between two Crafts. The Petitioning Organization relying upon history, tradition and practice supported by Carrier instructions issued in 1955 that; "Section forces are responsible for cutting underbrush over the entire right-of-way, including that under telephone lines," and this Division's Award 16629 (House) where Carrier relied upon Rule 2(f), an exception to the Scope Rule, when it contracted out certain right-of-way brush cutting.

On the other hand, Carrier, throughout the handling of the dispute on the property, steadfastly contends that removal of brush, trees and undergrowth under communication lines and around communication boxes is the responsibility of the Telephone and Signal Departments to keep communication lines open from interference created by the undergrowth.

The Board has adhered to the principle, when the record lacks conclusive evidence of work assignment, that, "the method of determining to which class such work belongs is by examination of the reason for the performance of the work." (3638-Lewis).

The Board finds the instant record, without encroaching upon Petitioner's contractual right to the clearing of brush and vegetation from the right-of-way in general, lacks the probative evidence necessary to prove that the work here involved, on this property, was not performed at the behest of and for the benefit of the Telephone and Signal Departments. Therefore, the claim will be dismissed.

The Division gave notice of this dispute to the Brotherhood of Railroad Signalmen and Transportation-Communication Division of BRAC. Each Organization responded, advising they would not file submission or be present at scheduled hearings; thus disclaiming any interest in these proceedings.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killam
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1972.