

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21131
Docket Number SG-21075

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and its Employees in the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective October 1, 1973, particularly the Scope rule, and resulting in violation of Rule 72.

The portion of Scope rule specifically referred to is that portion reading; "pole line signal circuits and their appurtenances" and "and all other work generally recognized as signal work performed in the field" but includes all the rest of the Scope rule also.

(b) Mr. L. L. Freeman, Mr. E. Nicolai Jr., Mr. H. A. Hanson and Mr. L. J. Moore be allowed compensation for sixty (60) hours each at their respective straight time rates of pay. Time claimed account Carrier contracted with Evergreen Pacific Tree Service to cut and remove brush and trees from under and in the signal pole line, MP 744.3 to MP 747.5 of the Tillamook Line, on the Oregon Division.

[Carrier's file: SIG 152-330]

OPINION OF BOARD: This Scope dispute arises from the Carrier's use of an outside contractor to cut and remove brush from under and in the signal pole line on a three-mile segment of the Tillamook Line, Oregon Division. The work was supervised by the Signal Supervisor and payment to the contractor was subject to his approval of the work. A Signal Maintainer coordinated the work with train movements.

The Employees say the contractor's work violated the portion of the Signalmen's Scope Rule reading: "pole line signal circuits and their appurtenances... and all other work generally recognized as signal work performed in the field." The Carrier's position is that, since the disputed work is not specifically defined in the Scope Rule, the doctrine of exclusivity applies and the Employees must show system-wide, exclusive performance of the work in order to prevail.

In connection with the Carrier's exclusivity defense, the Employees cite Third Division Awards Nos. 13236 and 3638, along with the statements of thirty-seven (37) signal employees. Although Award No. 13236 ruled that the exclusivity doctrine does not apply where, as here, a craft claims work done by an outsider rather than by another craft, this award has not been followed by subsequent authorities and therefore it has no current precedential value. The other Award, No. 3638, stands for the proposition that the purpose of the work is the criteria for determining the craft to which such work belongs. In this case, however, the Employees have offered no evidence to demonstrate that the brush did in fact cause any signal failures, false signal indications, or otherwise interfere with signal control wires; consequently, Award No. 3638 does not support the claim.

It is clear from the foregoing that this case is governed by the doctrine of exclusivity, and that the fact of system-wide, exclusive performance of the work by signalmen must be proved to support the claim. The statements from the thirty-seven (37) signal employees do not establish this fact. The statements establish that the work has been performed by signal employees in the past - a fact conceded by the Carrier - but the statements do not contend that such has been the case system-wide and to the exclusion of other crafts and outsiders. In these circumstances, and on the whole record, it cannot be concluded that the Employees have met their evidentiary burden and the claim will accordingly be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.