

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23367
Docket Number MS-23329

John B. LaRocco, Referee

PARTIES TO DISPUTE: (A. Powley, C. Moon, T. Fudge, D. Rassmussen
(F. Suddarth and R. Sisk.
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an ex parte submission on January 17, 1980, covering an unadjusted dispute between us and the Southern Pacific Transportation Company (Pacific Lines) involving the question:

The Southern Pacific Transportation Company (Pacific Lines) violated the agreement, effective September 1, 1949 (including revisions) between the Company and the employees of the former Pacific Electric Company and particularly the Scope Rule., etc.

Very Truly Yours,

A. Powley
T. A. Fudge
F. C. Suddarth
C. Moon

Signed: A. Powley
C. Moon
T. Fudge
D. Rassmussen
F. Suddarth
R. Sisk"

OPINION OF BOARD: Six Signalmen have brought this claim for approximately two hundred ninety six hours of straight time compensation and eight hours of overtime wages when the Orange County Steel Salvage, Inc. allegedly performed work which was exclusively reserved to the signalmen under the Scope Rule.

The facts are not in dispute. On May 8, 1978, the Carrier sold a portion of the pole lines and wire located along the Santa Monica Branch of the former Pacific Electric Railway to the salvage company. The property subject to the sale was not in use. According to the sales contract, the purchaser

was obligated to remove the pole line and wire from Carrier property. During May, June and July, 1978, the employees of the salvage company removed the pole line and wire.

The claimants argue that the work was traditionally, historically and exclusively reserved to them under the Scope Rule. The Carrier contends that the claimants have failed to prove a violation of the Scope Rule. In addition, the Carrier asserts that this Board lacks jurisdiction to adjudicate the claim because the claimants allegedly filed their claim with this Board more than nine months after the highest designated Carrier official denied the appeal of the claim.

To prove a violation of the Scope Rule, the claimants must demonstrate that there has been a customary, historical and exclusive right to perform the work. Third Division Award No. 22144. In this case, there is insufficient evidence to support a finding that the removal of the pole line and wire was covered by the Scope Rule. The property removed by the salvage company was no longer owned by the Carrier and even before the sale, the pole line and wire served no useful function. After the sale, the Carrier had no control over the pole line and wire. The salvage company merely removed its own property. Thus, we must deny the claim.

We note that there is a dispute regarding whether or not the claimants filed their claim with this Board before the expiration of the nine month limitation period set forth in Paragraph 1(c) of the August 21, 1954 National Agreement. However, since we have found that the Carrier did not violate the applicable agreement, we need not address the timeliness issue.

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

That 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 28th day of August 1981.