

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23575
Docket Number SG-23814

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company:

(a) Carrier violated the parties' Signal Agreement, as amended, particularly Scope Rule 1, and Seniority District Rule 34, when on or about June 4, 1979 it assigned or otherwise allowed B&O Railroad Signal employees to remove C&O Railway Signal facilities on C&O No. C1 and C2 tracks in the area of its Gest Street and Liberty Street interlockings, Cincinnati, Ohio.

(b) Carrier now be required to compensate the following employees assigned to Cincinnati Seniority District Signal Maintenance Unit No. 1642 additional time equal to that worked by B&O Signal employees in performance of work cited above, such claim made because of the loss of work opportunity and/or as a consequence of the violation:

<u>Claimant</u>	<u>C&O ID No.</u>	<u>Position Assigned</u>	<u>Rate of Pay</u>
G. Flanner, Jr.	2272466	Lead. Sig. Mtr.	\$8.93
D. J. Clayton, Jr.	2621002	Signal Mtr.	8.68
J. K. Rice	2624040	Signal Mtr.	8.68
G. M. Moore	2266819	Signal Helper	7.33
J. E. Zimmer		Signal Helper	7.33

(c) Carrier check its records jointly and in cooperation with representatives of this Brotherhood to determine the number of man-hours worked by and/or paid to the B&O Signal employees, in aiding to determine the amount of compensation due claimants."

OPINION OF BOARD: The Organization brings this claim on behalf of five Chesapeake and Ohio signal employees for compensation for the time Baltimore and Ohio signal employees allegedly spent removing Chesapeake and Ohio signal facilities during June, 1979 on the Cheviot Subdivision (in the area of the Gest Street and Liberty Street interlockings) near Cincinnati, Ohio. The Organization asserts that the Scope Rule (Rule 1) contained in the agreement between the Carrier and the Organization covers the work performed by the Baltimore and Ohio signal employees. The Carrier contends the disputed work is not covered by the Scope Rule because, in 1978, it had properly abandoned the line where the work was performed pursuant to an Order issued by the Interstate Commerce Commission. Subsequently, in March, 1979, the Carrier leased the line to the Baltimore and Ohio Railroad Company. According to the Carrier, when the disputed work was performed, the rail line,

including all signal facilities, was under the exclusive control of the Baltimore and Ohio. The Organization rebuts the Carrier's arguments by asserting that the Carrier failed to timely exercise its right to abandon the line and, therefore, it continues to own the line.

While we recognize that there is a substantial dispute over whether the Carrier had properly abandoned the line at the time the disputed work was performed, the issue of abandonment is not material to this dispute. Regardless of whether or not the Carrier retained an ownership interest in the Cheviot Subdivision, the record clearly demonstrates that the property, rail line, and all signal facilities had been leased to the Baltimore and Ohio before the disputed work was performed. A long line of well entrenched precedent on the Third Division states that work performed on leased property belongs to the employees of the lessee. Third Division Awards No. 21283 (Eischen); No. 20644 (Eischen); No. 20639 (Twomey); No. 20529 (Lieberman); No. 20280 (Lieberman); No. 19639 (Lieberman); No. 18241 (Devine); No. 14641 (Brown); No. 13056 (Engelstein); and No. 4783 (Stone). Once the Carrier leased the property to the Baltimore and Ohio, it no longer had dominion and control over the disputed work which removed the work from the coverage of the Scope Rule. Thus, the signal employees of the Baltimore and Ohio were entitled to perform the work.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

