NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24085
Docket Number SG-24365

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood on The Denver and Rio Grande Western Railroad Company

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required and/or permitted Seven Trees Company of Spanish Fork, Utah, to cut and remove trees from the signal pole line near Mile Post 693 on the Westward Track on Monday, October 13, Tuesday, October 14 and Wednesday, October 15, 1980.

(b) Carrier should now be required to compensate Signal Foreman S. S. Argyle and Assistant Signalmen S. L. Smith, D. G. Madsen, R. C. Roller, M. W. Speakman and P. L. Rivera for 24 hours pay each at their regular rate of pay."

OPINION OF BOARD: The trees involved in this dispute were located on private property adjoining Carrier's right of way. Some of the trees were about seventy-five feet tall with trunks measuring two to three feet in diameter. Branches of the trees spread out over the pole line of the Carrier. In consultation between Carrier supervisory personnel and the owner of the property it was decided the Carrier would have the trees cut down and piled on the owner's property for his disposal.

Acting on these arrangements the Carrier contracted the work to the Seven Trees Company which performed the work in normal daylight working hours during the period October 13-15, 1980.

In the Carrier submission it is contended that:

"The Scope rule does not cover the work involved and there is no assertion or showing that the work by practice or custom is the exclusive work of the Signalmen on a system wide basis.

"Because the trees were located on property not belonging to this Carrier such work is beyond the orbit of the working agreement the parameters of which obviously contemplate only the work of the Carrier on the railroad right of way. Wording of the claim suggests erroneously that the trees were located on the Carrier right of way, not on private property adjoining the Carrier right of way."

The Organization has not submitted any proof that the work of clearing brush and removing trees is exclusively reserved to signalmen under the agreement. In conferences on the property between representatives of the Organization and Carrier, the Local and General Chairman admitted that other crafts also do this kind of work. The Signalmen representatives admitted that there would have been no complaint if the work had been performed by employes covered by the Maintenance of Way working agreement or the working agreement of the Telephone and Telegraph Maintenance employes.

The issues in this case are closely related to those involved in Third Division Award No. 23904 and we quote therefrom as follows:

> "In our review of this case, we concur with Carrier's position. The pivotal question before this Board is whether the Scope Rule covered the disputed work. Close reading of the Signalman's Agreement indicates that it embraces the maintenance of pole line signal circuits, but the work performed on the aforesaid dates does not appear to constitute such maintenance. Trees and brush are obviously not part and parcel of signal pole lines and before pole line maintenance can be firmly established, it is necessary to demonstrate that trees and brush grew into the pole lines and interferred with or endangered signal operations. Since Claimants have not shown that these contingencies were present when the other employes performed the work, we are constrained by the facts of record to deny the claim."

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 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 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 5th day of January 1983.