

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25489
Docket Number SG-25408

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of furloughed Signalman C. T. Dortch account not being used to operate dozer for the purpose of clearing underbrush from the signal code and signal circuit line wires from about M. P. 299 to about M. P. 341 on the Midsouth Division beginning on or about October 4, 1982, and ending on or about November 18, 1982. Contractor Paul Wortham was used instead for four ten-hour days per week for seven consecutive weeks or 28 days for a total of 280 hours. [Carrier file: 135-241-205 Spl. Case No. 409 Sig.]

OPINION OF BOARD: During the period October 4, 1982, through November 18, 1982, the Carrier employed an outside contractor, Paul Wortham, to clear brush along the right of way and around the signal and communications poles and wires on about forty (40) miles of its Midsouth Division. The Organization contends that such clearing of brush belongs to Signalmen under the Scope Rule of the applicable Agreement. That Rule reads, in relevant part:

"This agreement governs the...working conditions of all employees in the Signal Department...performing work generally recognized as signal work, which work shall include the...maintenance...in the field, of the following:

* * *

(b) ...poles...wires and fixtures, pertaining thereto...

* * *

(e) ...excavating and back filling work, including the operation of machines, used in connection with...maintaining any system or equipment covered by this agreement,...."

The record indicates, and the Organization acknowledges, that, as a general rule, clearing brush from the Carrier's right of way is work belonging to the Maintenance of Way craft. However, the Organization contends that, since the maintenance of signal systems, including line poles and wires, and the operation of equipment used in such maintenance, is specifically covered by the Scope Rule, the work of clearing brush from the right of way around signal poles and wires belongs exclusively to the Signal craft where the primary purpose of the work is to maintain signals. The Organization asserts that in the instant claim, the contractor was cutting brush from around the signal poles and lines for the primary purpose of maintaining them, thereby violating the Scope Rule.

The Carrier argues that the work in question is not specifically covered by the applicable Scope Rule. The Rule does not specifically refer to clearing brush. Some poles do not carry signal wires. Where a Scope Rule does not specifically cover the disputed work, it is the burden of the Organization to show that its members have historically performed the work in question on a system-wide basis. The Carrier asserts that other crafts, specifically including the Maintenance of Way craft, as well as other outside contractors have performed the work of operating equipment to clear brush in and around signal poles and lines. The Carrier argues, therefore, that its use of the contractor did not violate the Scope Rule.

The Carrier asserts further that the record does not support the Organization's assertion that the primary purpose of the work was signal maintenance and that the Organization's argument based on that assertion is, therefore, unavailing.

The key question in this dispute is whether the work falls within the Scope Rule. If it falls within the express language of the Rule, then the work belongs to the Signal craft. If the work is within the Scope Rule but is not specifically identified, then the claim must be denied unless the Organization has shown historical entitlement to the work based on its exclusive performance of the work on a system-wide basis in the past.

The Rule does not specifically identify the work of clearing the right of way as falling within the exclusive jurisdiction of the Signal craft. Nor does the record support the Organization's position that the primary purpose of the contractor's work was signal maintenance. The record indicates that the contractor cleared all the right of way between the track and the signal lines and poles as well as around them. He performed work on grade crossings. Indeed, in clearing forty (40) miles of right of way, only two (2) signal grounds were cleared. Since two (2) Signalmen also worked on the right of way at that time, it is logical that such signal maintenance as was required was performed by them.

Indeed, the Organization's claim in the instant case is less strong than in Third Division Award 24163, involving the same parties and Scope Rule, since it was conceded in that case that the clearing activity was in response to Federal Railroad Administration citations of Carrier for excessive vegetation near signal lines. The Board in that case denied the claim. Nothing in the record here indicates such a signal-related primary purpose.

The record further indicates that the Maintenance of Way craft had frequently performed the work of clearing rights of way, and that other outside contractors had also performed such duties. The Board concludes that the work had not been performed exclusively by the Signal craft.

The Board concludes, therefore, that since the work in question primarily involved clearing the right of way, is not specifically named in the Scope Rule, and had not historically been exclusively performed by the Signal craft, the Carrier's use of an outside contractor to perform the work did not violate the Scope Rule of the applicable Agreement. See Third Division Award 21217.

Accordingly, the claim must be, and it is, 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


That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.