

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation(Conrail):

Claim on behalf of J. D. Smith and M. A. Stevens for 10 hours per day, at the prevailing Signalmen's rate of pay, for 5 days per week, starting on October 8, 1984, and continuing until the violations of the Scope Rule are discontinued, account of Carrier violated agreement when it allowed or permitted Emery Tree Service (a contractor), to cut and remove brush that was impairing the operation of the signal system from MP 330.5 eastwardly." Carrier file: SD-2186

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As a result of false readings, the Carrier utilized a three man signal crew prior to October 8, 1984, to remove brush fouling a section of its signal system. The Carrier then contracted with Emery Tree Service to cut and clear brush and trees along a portion of the Carrier's right of way. The contractor commenced work on October 8, 1984.

On October 8, 1984, the Organization's Local Chairman informed the Carrier that unless the contractor was accompanied by a Signalman, the Organization would consider the use of the contractor as a violation of the Agreement. The Carrier disagreed that use of the contractor in this situation violated the Agreement, but nevertheless reached an accord with the Organization that a signal maintainer could work with the contractor commencing October 9, 1984, until the job was completed on November 15, 1984. Notwithstanding the

arrangement, after the work was completed, the Organization processed the instant Claim on behalf of the two Claimants for compensation for the period that the contractor performed brush cutting services.

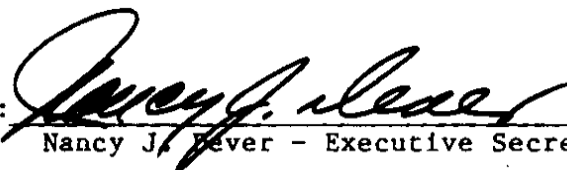
We find it unnecessary to reach the question of whether or not use of the contractor violated the Scope Rule. Here, through the Local Chairman, the Organization agreed that the Carrier could utilize the contractor provided that one signal maintainer worked along with the contractor. Assuming that the Organization is correct that the Local Chairman was without authority to modify the Agreement, we do not view the arrangement made with the Carrier as a modification of the Agreement. We view the Local Chairman's actions as a settlement of a potential Claim - an action that was represented as being within his authority and which was relied upon by the Carrier. Under the circumstances, the Organization cannot complain that the Agreement was violated, agree to a settlement of a potential Claim, consent to the Carrier's use of the contractor, receive a resultant benefit and then file a Claim after the Carrier performs the very act consented to by the Organization.

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 17th day of January 1989.