

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27725
Docket No. SG-26960
89-3-85-3-743

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
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Western Lines):

On behalf of the members of Signal Gang No. 9 headquartered at Brooklyn, Oregon, for all actual wage loss suffered by each individual member at his applicable pro rata rate of pay, account of Carrier violated the Signalmen's Agreement as amended, particularly, the Scope Rule, APPENDIX 'A 1' and Rule 72, when on certain days during November and December 1984, it contracted out the work of removing trees and brush which interfered with signal wires and circuits between MP 744 and 747, on the Tillamook Branch of the Southern Pacific Transportation Company." Carrier file SIG 152-448.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Carrier contracted with Evergreen Pacific Tree Service for the removal of trees and brush between Lake Oswego and Cook (M.P 747 and 744) on the Tillamook Branch Line, which work was performed on various days during November and December 1984. Pointing to the Carrier's January 16, 1985, denial which states "Vegetation in this area was removed primarily due to the interference with signal lines;...", the Organization claims a violation of the Scope Rule and seeks compensation on behalf of Claimants.

This same dispute involving the same contractor on the same section of track previously arose in 1973. In Third Division Award 21131, we held that: "It is clear ... that this case is governed by the doctrine of exclusivity, and that the fact of system-wide, exclusive performance of the work by signalmen must be proved to support the claim." In that case, we denied the same Claim as the one made herein on the basis that the Organization had not "met their evidentiary burden."

Since Award 21131 is between the parties on this property and governs the same dispute and since we cannot say that Award 21131 is palably erroneous, that Award is controlling. As in Award 21131, we find no evidence in this matter of a system-wide, exclusive performance of the work by the employees and therefore we must again deny the Claim.

The Organization has placed undue emphasis upon the Carrier's January 16, 1985, denial letter wherein the Carrier stated that the vegetation was removed primarily due to the interference with signal lines. Aside from the fact that the Carrier stated in that letter that the vegetation was also removed "as a fire prevention measure and for the purpose of enhancing the view along the right-of-way" (which the Organization concedes is work belonging to maintenance of way employees), even assuming the primary purpose was as stated by the Carrier and relied upon by the Organization, such does not change the result in light of the standards set forth in Award 21131.

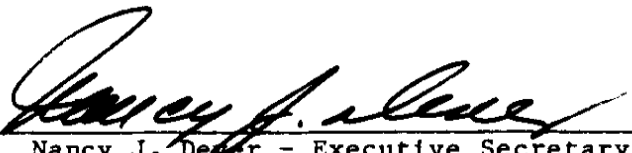
The Organization is correct that in Award 21131, the Board stated that: "In this case, however, the Employees have offered no evidence to demonstrate that the brush did in fact cause any signal failures, false signal indications, or otherwise interfere with signal control wire...." But that statement was made in the context of distinguishing the facts in Award 21131 from Third Division Award 3638 (which arose under a composite service rule and not a scope rule) and which "stands for the proposition that the purpose of the work is the criteria for determining the craft to which such work belongs." We did not hold in Award 21131, as the Organization argues, that if interference by vegetation with signal wires is shown, then the Organization is therefore entitled to a sustaining Award. As discussed above, our holding in Award 21131 was the requirement for the Organization to show "the fact of system-wide, exclusive performance of the work by signalmen." Therefore, giving the Organization the benefit of the doubt and assuming that the Carrier's January 16, 1985, letter can be read to show that the vegetation involved interfered with signal lines, in light of the requirement in Award 21131, in this case on this property, the Organization must nevertheless further demonstrate a system-wide, exclusive performance of the claimed work. It has not done so. For the same reasons, similar language in Third Division Award 23904 fails to support the Organization.

Under the circumstances and particularly in light of the standards set forth in the prior controlling Award which governs this dispute, we must deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.