

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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):

Case No. 1

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division, Southern Region who are listed below:

(a) That on or about June 7-June 26, 1984 at Greenup, Ill (E.up), Mile Post 117.7, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21. (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.79 per hr	24
	J. L. Hollingsworth	Signalman	11.79 per hr	24
	D. W. Fitt	Signalman	11.79 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2153 BRS File 6656CR

Case No. 2

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division - Southern Region who are listed below:

(a) That on or about between June 7 and June 26, 1984 at Montrose, Ill., Mile Post 131.1, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21. (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.79 per hr	24
	J. L. Hollingsworth	Signalman	11.79 per hr	24
	D. W. Fitt	Signalman	11.79 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2155 BRS File 6658CR

Case No. 3

Claim on behalf of the C&S employees of Seniority District No. 21 - Southwest Division, Southern Region who are listed below:

(a) That on or about between June 8 and July 27, 1984 at West Farrington, Ill, Mile Post 81.7, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21 (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.96 per hr	24
	J. L. Hollingsworth	Signalman	11.96 per hr	24
	J. W. Parker	Signalman	11.96 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, or a total of ninety-six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2157 BRS File 6660-CR

Case No. 4

Claim on behalf of the C&S employees of Seniority District No. 21 - Southwestern Division - Southern Region who are listed below:

(a) That on or about between June 8 and July 27, 1984 at East Marshall, Ill, Mile Post 89.7, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21. (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.96 per hr	24
	J. L. Hollingsworth	Signalman	11.96 per hr	24
	J. W. Parker	Signalman	11.96 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2159 BRS File 6662-CR

Case No. 5

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division - Southern Region who are listed below:

(a) That on or about between June 8 and July 27, 1984 at Effingham, Ill., Mile Post 140.6, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21. (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.79 per hr	24
	J. L. Hollingsworth	Signalman	11.79 per hr	24
	D. W. Fitt	Signalman	11.79 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2161 BRS File 6664-CR

Case No. 6

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division - Southern Region who are listed below:

(a) That on or about between June 8 and July 27, 1984 at Funkhouser, Ill., Mile Post 144.9, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21 (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.79 per hr	24
	J. L. Hollingsworth	Signalman	11.79 per hr	24
	D. W. Fitt	Signalman	11.79 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2163 BRS File 6666-CR

Case No. 7

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division - Southern Region who are listed below:

(a) That on or about August 6, 7, and 8, 1984 at Macksville, Ind., Mile Post 75.3, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties and accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21 (Former Pennsylvania Railroad Property)

	<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
(b) That Claimants,	C. R. Paden	Foreman C&S	\$13.76 per hr	24
	C. C. Cohea	Signalman	11.79 per hr	24
	J. L. Hollingsworth	Signalman	11.79 per hr	24
	D. W. Fitt	Signalman	11.79 per hr	24

be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2165 BRS File 6668-CR

Case No. 8

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division - Southern Region who are listed below:

<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
C. R. Paden	Foreman C&S	\$13.76 per hr	24
C. C. Cohea	Signalman	11.96 per hr	24
J. L. Hollingsworth	Signalman	11.96 per hr	24
D. W. Fitt	Signalman	11.96 per hr	24

(a) That on or about August 10, 13, and 14, 1984 at Terre Haute, Ind. Approx. Mile Post 68.8 on the Indianapolis, Ind. to St. Louis, Mo. main line, the Company arbitrarily, capriciously and blatantly violated the Scope Rule and Classification Rule of the Sept. 1, 1981 CRC/BRS Agreement, when it allowed an outside contracting firm employees to come onto Conrail Property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen Sen. Dist. 21.

(b) That claimants, C. R. Paden, C. C. Cohea, J. L. Hollingsworth and D. W. Fitt be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) or twenty four (24) hours each claimant, to be paid at the respective time and one half rate. Carrier File SD-2167 BRS File 6670-CR

Case No. 9

Claim on behalf of C&S employees of Seniority District No. 21 - Southwest Division - Southern Region who are listed below:

<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
C. R. Paden	Foreman C&S	\$13.76 per hr	24
C. C. Cohea	Signalman	11.96 per hr	24
J. L. Hollingsworth	Signalman	11.96 per hr	24
D. W. Fitt	Signalman	11.96 per hr	24

(a) That on or about August 14 and 15, 1984 at East Farrington, Ill., Mile Post 80.6, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21. (Former Pennsylvania Railroad Property)

(b) That claimants, be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties or a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2179 BRS File 6672-CR.

Case No. 10

Claim on behalf of the C&S employees of Seniority District 21 - Southwest Division - Southern Region who are listed below:

<u>Name</u>	<u>Title</u>	<u>Rate of Pay</u>	<u>No. Hrs.</u>
C. R. Paden	Foreman C&S	\$13.76 per hr	24
C. C. Cohea	Signalman	11.96 per hr	24
J. L. Hollingsworth	Signalman	11.96 per hr	24
D. W. Fitt	Signalman	11.96 per hr	24

(a) That on or about June 26 and June 27, 1984 at West Aden, Ill., Mile Post 99.7, the Company arbitrarily, capriciously and blatantly violated the Scope Rule, Classification Rule and preservation paragraph of the Scope Rule of the CRC/BRS Agreement of Sept. 1, 1981 when it allowed outside contractors to come onto Conrail property and perform duties that accrue to none other than those employees represented by the Brotherhood of Railroad Signalmen, Sen. Dist. 21. (Pennsylvania Railroad Property)

(b) That claimants, be paid a similar number of hours that employees other than those represented by the Brotherhood of Railroad Signalmen were allowed to perform these duties, a total of ninety six (96) hours or twenty four (24) hours each claimant, to be paid at the time and one half rate. Carrier File SD-2170 BRS File 6673-CR"

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 were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute, and filed a Submission with the Division.

The Organization presents ten (10) claims on behalf of four Communication and Signal (C&S) employees contending that the Carrier improperly permitted a contractor to dig holes for the installation of cement and metal foundations and pour cement for the construction and installation of three metal foundations which were used as the base of microwave antenna towers.

The microwave system, in part, is used for the transmission of signal information in connection with centralized train control (CTC). Most of the channels of the microwave system are used for communication of information unrelated to the signal system. The Organization argues this work is reserved to Claimants under a provision of the Scope Rule which reads:

"The following items of work on the former railroad indicated will continue to be performed by employees represented by the Brotherhood of Railroad Signalmen:

Pennsylvania Railroad, Pennsylvania Reading
Seashore Lines and Dayton Union Railway Company

Installation and maintenance of all telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment).

Installation, maintenance and repair, and testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply, (when such compressors, sets or power supply are used wholly or primarily for telegraph and telephone devices, apparatus or lines, and are individually housed in signal or telegraph and telephone facilities) which are part of the telegraph and telephone systems, to the extent that such work is now being performed by employees of the Communication and Signal Department."

The Carrier responds to the Organization's argument by referring to the Award of Public Law Board 2543, which held:

"The work of installation and maintenance of Consolidated Rail Corporation owned radio equipment does not accrue to Communications and Signal Department employees represented by the Brotherhood of Signalmen."

The Board notes that it decided a similar issue in Third Division Award 26825 in a case involving the Carrier using members of the IBEW to set poles which were used to mount radio antennae. The Board held that the installation of such poles was within the Scope of the Signalmen's Agreement and was not taken away by PLB 2543.

Apart from the merits of this dispute, the Organization has raised a procedural issue, contending that the Carrier failed to properly deny the initial claims in that the denial letters were authored by the Assistant Engineer rather than Supervisor-C&S, as required by Rule 4-K-1(a), which reads:

"All grievances or claims other than those involving discipline must be presented in writing by the employee or on his behalf by a union representative, to the Supervisor-C&S (or other designated supervisor), within sixty (60) calendar days from the date of the occurrence on which the grievance or claim is based. Should any such grievance or claim be denied, the Supervisor shall, within sixty (60) calendar days from the date same is filed, notify whoever filed the grievance or claim (employee or his representative) in writing of such denial. If not so notified, the claim shall be allowed as presented."

The Organization contends that the intent of the Rule is to require that claims or grievances be denied only by the person to whom they were filed. The Carrier responds by suggesting that the Rule only requires a timely denial and not that it be issued by the Supervisor-C&S. Furthermore, the Carrier asserts the claims would not be payable even if the Organization's procedural argument were valid because they "were invalid at their inception." If the latter argument had merit, there would be no need for the Rule at all because the Carrier would be obligated to deny only valid claims, which would be illogical.

This issue is not new to these parties. In Third Division Award 26414, this Board wrote:

"As to the procedural issue, Rule 4-K-1 refers to the 'Supervisor-C&S (or other designated official).' Carrier maintains no violation in that the Division Engineer was known as the designated official to respond. The Organization never refutes the Carrier's assertion. As such, we conclude that no procedural violation occurred."

In Third Division Award 26457, this Board held:

"While we share with the Organization its concern that the Division Engineer was not the Supervisor-CLS (sic), we cannot disregard the Organization's failure to contest this point in its appeal letters. From the record, and on balance, we find that Carrier complied with Rule 4-K-1(a). We do advise that the parties meet and clarify more pointedly this aspect of the grievance appeals process."

In the case herein, the Carrier made no assertion that the Assistant Engineer was the designated official. The Organization raised its objection at the next level of appeal and maintained it throughout the handling on the property. The issue is squarely before the Board, and we agree with the Organization that the claim must be denied by the Supervisor-C&S or another designated official. The Agreement clearly states that the failure to do so requires that the claim be allowed as presented. Accordingly, the claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.