

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29896
Docket No. SG-29206
93-3-90-3-82

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Baltimore &
(Ohio)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company (B&O):

Claim on behalf of the signal gang headquartered at Kensington, Maryland.

- (a) The Carrier violated the provisions of the current Signalmen's Agreement, the SCOPE, particularly parts (d&i) when it allowed an outside contractor to perform signal work.
- (b) Carrier should now be required to compensate the men of gang 7D46 equally, all money paid to the contractor to perform signal work." Carrier file 15 (89-6). BRS Case No. 7819-B&O.

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 employe 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.

There is no dispute as to the basic facts. The Carrier contracted with an outside concern for the installation of underground cable. The work began July 25, 1988, and ended

September 15, 1988. Carrier forces assisted the contractor. After the completion of the work, the instant claim was filed.

After a review of the record, the Board must conclude that, under these unique facts, the scope rule was not violated. The Carrier maintained from the outset that the Carrier did not possess the specialized type of equipment to do this particular job. The Organization did not dispute this but argued that the Carrier could have rented the equipment. The Carrier denied, without refutation from the Organization, that such equipment could not be rented without hiring the lessor's skilled operators. The Carrier also maintained, again without rebuttal from the Organization, that even if the equipment could be rented without operators, the Carrier forces were without the requisite skills to operate it. Given these facts and circumstances, we can not conclude the agreement was violated.

Last, the Board observes that if the dispute hadn't been resolved on the basis of the merits, the Organization would have had to justify why it "laid behind the log" and didn't file the claim until after the work was completed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.