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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30645
Docket No. SG-30667
94-3-92-3-460

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on Consolidated Rail Corporation:

Claim on behalf of the members of Local #225 of the Brotherhood of Railroad Signalmen for the loss of work opportunity for the following K.J. Warren #170027, R.R. Szprygada #673930, J.J. Skubis #718281, R.E. Laude #853873, V.D. Parker #885315, and F.E. Jones #753085. This loss of work opportunity occurred on the Lockport Branch between MP 69.35 and MP 56.11, on March 11, 12, 13, 14, 15, and 18, 1991.

- A) On Monday March 11, 1991, and continuous until Monday March 18, 1991, the Carrier violated the Scope of the current B.R.S.-C.R.C. Agreement dated September 1, 1981, when it allowed a contractor C. Mays Tree Service with six (6) men on the property between the above Mile Posts to cut brush under the Signal pole line.
- B) Carrier should now be required to make Claimants whole for their loss of work opportunity."

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 employee 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 noted in the claim, a contractor was used to remove brush and trees that threatened the Carrier's signal lines. The work was performed shortly after a severe ice storm struck the involved area.

The Organization contends that the disputed work is reserved to the signal employees by virtue of the Scope Rule of the Agreement. The Rule lists the following among "...all other work recognized as signal work:

Removal of brush or trees that impair the operation of the signal system."

The Organization seeks an aggregate 1,216 hours of pay for the six named Claimants.

On the property, the Carrier did not strenuously dispute that tree and brush removal impairing the operation of the signal system falls within the Scope of the Agreement. Rather, the thrust of its position was that exigent circumstances resulting from the ice storm as well as the need for specialized skills and equipment justified its use of the contractor. Moreover, Carrier maintained that three Signalmen worked along with the contractor in the brush removal portion of the work. Carrier also says the claim is clearly excessive since contractor personnel were on the property only a total of 286 hours.

In reviewing this matter, we have confined ourselves, as we must, to considering only the evidence and arguments developed by the parties during their handling of the dispute on the property. Therefore, new information contained in the Submissions to this Board has been disregarded.

After careful consideration of the on-property record, we find that Carrier violated the Scope Rule. As noted above, absent unusual circumstances, scope coverage of the work is not seriously disputed by the Carrier. Indeed, in Third Division Award 26676, Carrier cited the above excerpted portion of the Scope Rule in taking the position that brush removal impacting the signal system accrued to the employees of the Signal Department. It took this position in successfully resisting a claim to similar work by its Maintenance of Way employees.

Of critical significance in this dispute is the alleged need for specialized skills and equipment to remove large trees and tree branches. The Organization provided photographic evidence of the work areas to bolster its assertion that no such skills or equipment was necessary. With the issue thus joined, it was incumbent upon the Carrier to establish its affirmative defense by submission of probative evidence to support its assertions. On this record, Carrier failed to do so. Consequently, the violation issue must be resolved in the Organization's favor.

Regarding remedy, the Organization provided no rational explanation for its claim of 1,216 hours of compensation for the 286 hours worked by the contractor's employees. Moreover, it is essentially unchallenged that three signal employees worked with the contractor throughout. While the Organization alleges each Claimant suffered a lost work opportunity, no cognizable loss has been demonstrated by the on-property record. These circumstances significantly mitigate the Organization's claim.

The Organization cited Public Law Board No. 4603, Award 5, involving these same parties under very similar circumstances, as precedent for granting an appropriate monetary award. The contracted work there spanned several months versus the six-day period here. Following the rationale expressed in Award 5, we award the nominal sum of \$50.00 to each Claimant.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

Form 1
Page 4

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.