

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31557
Docket No. MW-32198
96-3-94-3-625**

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned three (3) Signal Department employees to perform B&B Subdepartment work (installing a 2' x 20' culvert) adjacent to the track at Mile Post 115.4 of the Chattanooga Subdivision on September 23 1993 [System File 9(32) (93)/12 (94-0010) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, B&B employees J.H. Roberts, C.V. Arnold, L.L. Woodlee and K.W. Steel shall each be allowed eight (8) hours' pay at their respective straight time rates."

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 Third Party in Interest, the Brotherhood Railroad Signalmen was advised of the pendency of this dispute, but did not file a Submission with the Board.

This dispute arose because three Signal Department employees installed a culvert near Mile Post 115 on the Carrier's Chattanooga Subdivision. The culvert was located on property owned by the State of Alabama and was constructed as a part of a signal project shared with the State of Alabama.

Without belaboring the point, the Carrier's basic argument is that the work at issue was not governed or controlled by the Carrier because it was performed on State property. Therefore, the Carrier was not in control of the project.

Certainly, it is well established that when work performed is not within the Carrier's direction or control, the various Scope Rules normally do not apply. However, that is not the case here as shown by the fact that Carrier's employees (Signalmen) were assigned the work by the Carrier. The only issue, then, is whether the work belonged to employees represented by the Brotherhood of Maintenance of Way Employees. We find that it clearly was within its craft, as argued by the Organization.

With respect to the question of compensation, we find that the Claimants were not adversely affected by the Carrier's action. Accordingly, we follow those Awards which have held that compensation is not warranted under circumstances similar to the facts in this case.

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 order to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.

LABOR MEMBER'S CONCURRENCE AND DISSENT
TO
AWARD 31557, DOCKET MW-32198
(Referee Muessig)

The Board correctly found that the Agreement was violated when the Carrier assigned employes not covered by the Agreement to perform work reserved to the Maintenance of Way Employees. This finding was not difficult to make inasmuch as the Carrier freely admitted that it had assigned employes represented by the Brotherhood of Railroad Signalmen to perform culvert installation work. We concur with the Majority's findings insofar as the Agreement violation is concerned; however, we are troubled by the referee's failure to compensate the Claimants for their lost work opportunity. We are impelled to point out that on this property there exists no fewer than sixteen (16) recently rendered awards wherein this Board has compensated the claimants therein for a lost work opportunity and to protect the integrity of the Agreement in class and craft disputes. The Organization would be negligent not to point out this fact. The referee's failure to award damages in this case is an aberration that is directly contrary to the controlling precedent on this property. Insofar as the remedy is concerned in this case, I respectfully dissent.

Respectfully submitted,


Roy G. Robinson
Labor Member