

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31640
Docket No. SG-31400
96-3-93-3-83**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Company (CNW):

Claim on behalf of D. Pantaleo and C. Haynes for payment of 579 hours at their respective straight time rates account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized, on 21 days between August 22 and September 20, 1991, other than employees covered by the Signalmen's Agreement to perform the covered work of removing trees and brush in and under signal pole lines and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 79-92-2. General Chairman's File No. S-AV-59. BRS File Case No. 8985-CNW."

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 or 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.

The basic fact situation in this case is clear and essentially uncontroverted. The named Claimants were regularly assigned as Signalmen during the period of the dispute and performed service on their assignments on each of the claim dates. The dispute is based on the fact that Carrier utilized an outside contractor to clear vegetation and trees along a 43-mile section of its property. The contractor worked on 21 dates during August and September 1991. The contractor used four employees on each of 11 claim dates; three employees on each of nine claim dates; and two employees on one of the claim dates. The case record shows that the Claimants worked along with the contractor performing flagging and other signal protection duties along the route of the vegetation removal operation.

The Organization argued that the use of the outside contractor violated the terms and conditions of the SCOPE Rule, specifically that portion of the SCOPE Rule which refers to "maintenance of signals or signal systems" as well as that portion of the SCOPE Rule which provides that "no persons other than those coming within the scope of this agreement will be required or permitted to perform any of the above work." The Organization further contended that work of the type performed by the contractor is reserved to Signalmen because the purpose for which such work was performed was directly related to the maintenance of the signal system and that Signalmen have, in fact, performed such work in the past.

The Carrier insisted that the Signalmen's SCOPE Rule on this property is general in nature and does not specifically identify brush and tree removal as an item of work accruing exclusively to Signalmen. Carrier admits that Signalmen have on occasion performed brush and tree removal, but they contend that Maintenance of Way employees as well as other outside contractors have also performed such work thereby denying exclusivity of performance by any one craft or group of employees. In this particular situation, Carrier contended that the nature and extent of this project precluded the use of anyone other than the specialized contractor because of the magnitude of the required removal and the need for specialized equipment which Carrier did not own as well as tree removal expertise which the Signalmen did not possess. Carrier further insisted that because of the fact that the Claimants were fully employed working along with the contractor as the clearing work was being performed, they suffered no loss of work opportunity or compensation and are not entitled to the payment requested by this claim.

On the basis of the respective positions of the parties, the Board invited the Brotherhood of Maintenance of Way Employes (BMWE) to be heard in this dispute as an interested Third Party. The BMWE presented an ex-parte submission to the Board

in which it acknowledged that both the Signalmen's group as well as the Maintenance of Way group have in the past performed vegetation control. The BMWE insisted, without offering any contractual agreement provision in support thereof, that:

"The Brotherhood of Maintenance of Way Employs have traditionally and customarily performed vegetation control along the Carrier's right of way from the pole line to the right of way markers and from the pole line to the track. Evidence of an industry-wide practice of clearing vegetation from the right of way (other than from under the pole lines), as being reserved to the employs of the Maintenance of Way Department, is found within Awards 28513 and 29479, reproduced and attached hereto as Employ's Exhibits 'A' and 'B', respectively. Said awards also awarded compensation for so-called 'fully employed' claimants."

The Board's review of the citations of authority referenced by the BMWE reveals that both of the cited Awards were involved primarily with a Carrier violation of the advance notice requirements of Article IV of the May 17, 1968 National Agreement. The basis of the sustaining awards in those cases was due to the absence of the required advance notice to the Organization before using an outside contractor. Such a dispute is not present in this case. Therefore, neither the cited awards nor the BMWE unsupported allegation relative to a line of demarcation as between Signalmen's and Maintenance of Way employees' respective areas of vegetation removal are of any assistance in our determination of this case.

The Signalmen's SCOPE Rule reads as follows:

"Rule 1 - Scope

This agreement covers classification, rates of pay, advancement, seniority, and working conditions of employees engaged in the construction, repairing, renewing, replacing, reconditioning, testing, and maintenance of signals or signal systems with all appurtenances on or along the railway tracks for the regulations of the movement of trains, protection of highway crossing, etc., as follows:

- (a) Interlocking and derailing switch and signal systems.
- (b) Automatic block signal systems.

- (c) Automatic train speed or train control or train stopping systems (except that part on locomotives, cars, or in engine houses).
- (d) Car retarder systems.
- (e) Centralized traffic control systems, including power operated switch mechanisms.
- (f) Highway crossing warning signal systems, gate, or other devices, except grade crossings or junctions.
- (g) Train order signals, switch connected signals, or signals at railway grade crossings or junctions.
- (h) Spring switch mechanisms.
- (i) Pipe connected derails.
- (j) Bolt locks or circuit breakers or circuit controllers operated by switches, drawbridges, or other apparatus for the control of signaling devices.
- (k) Repairing, reconditioning, and reclaiming all signal devices and appurtenances, and other work in connection therewith.
- (l) All detector devices connected to or through signal or train control apparatus.
- (m) All other work heretofore generally recognized as railway signal work, including such tie plates, rail braces and insulated rods as may be agreed to between the Assistant Chief Engineer-Signals and the General Chairman. In this connection it has been agreed that the following rods, plates and braces at interlocking plants and at power operated remote control switches are a part of Signalmen's work:

At Turnouts - No. 1 rod, plates and braces on two ties directly beneath the switch points as well as on the first the (sic) ahead of the

switch point.

At Double Slip Switches - No. 1 rod, plates and braces on four ties directly underneath the points of double slip switches as well as on the tie ahead of the point.

Also, the No. 1 rods, plates and braces on the four ties underneath the movable point frogs.

It has also been agreed that at spring switches protected by a point lock the following rods, plates and braces are a part of Signalmen's work:

No. 1 rod, the No. 3 or No. 4 rod to which the unlocking device is connected, plates and braces on two ties directly beneath the switch points and the first tie ahead of the switch point and the plates and braces on the crank stand tie.

Included in the foregoing, when used exclusively for railway signaling purposes, and such parts of other installations used exclusively for railway signaling purposes, or when located in interlocking towers or other buildings or spaces assigned for railway signaling purposes, are the following:

1. Installing, maintaining, renewing and servicing -
 - (a) Electric power or other wire lines overhead or otherwise; poles and fixtures; conduit and conduit systems, except when a part of retaining structures or walls; transformers, arresters, wires and cables.
 - (b) All batteries, including storage battery plants, charging outfits, and power panel equipment.
 - (c) Electric current generating equipment in substations.
 - (d) Compressed air plants and pipe lines and connections.
2. (a) Bonding of track for signaling purposes.

- (b) In changing or repairing rail, when energized bonds and/or track wires are removed while rail is in the track, the work will be performed by Signal Department employees.
It is understood that the removal of bonds or track wires after rail is de-energized may be performed by other than Signal Department employees.
3. Lighting of signals, except such oil lighted outlying train order signals, outlying switch signals, outlying interlocking plant signals, and yard or main line switch lights that are assigned to other classes.
 4. Painting of signals, interlocking connections, and similar apparatus.
 5. Installing foundations directly supporting signals or associated appurtenances. Decking on signal bridges is not included herein.
 6. Installing, maintaining, and servicing electric switch point heaters at interlocking plants.
 7. Installing, maintaining, and servicing oil switch point heaters at interlocking plants.
 8. Servicing gas switch point heaters at inter-locking plants.
 9. The installation, testing, maintenance and repair of circuit boards, all electronic equipment used in signal systems apparatus and detector and highway crossing warning devices connected to or through signal, retarder or interlocking systems.

NOTE: Does not include hotbox detectors or repair of equipment under warranty.

When signal circuits are handled on radio, radar, microwave or laser systems, the employees covered by this agreement shall install and maintain the signal circuits leading up to a common terminal where signal circuits are combined with other circuits and will takeoff at a common terminal where Signal Department circuits are again separated from other circuits.

10. No persons other than those coming within the scope of this agreement will be required or permitted to perform any of the above work.
11. It is hereby agreed that employees covered by the scope rule of this agreement will perform all necessary wiring on installation, replacement, maintenance or modification of the signaling systems including instrument houses, racks, panels, etc., except when an agreement is reached by the Assistant Chief Engineer-Signals and the General Chairman of the Signalmen's organization to cover a particular project.

It is further agreed that the provisions of the above paragraph do not apply to the purchase of signal equipment carried under plate and/or reference number by the manufacturer.

NOTE: This does not prevent inspections or tests made by supervisors, officers or manufacturers' representatives for the purpose of determining whether employees coming within the scope of this agreement are properly maintaining Signal Department apparatus."

For Petitioner to prevail in this dispute, it must be shown that the Agreement reserves the disputed work exclusively to it; or in the absence of a Rule showing, it must demonstrate by convincing probative evidence that such work has in the past been reserved exclusively to it to the exclusion of others. During the on-property handling of this dispute, the Organization candidly acknowledged that:

"We don't contest that all brush cutting is exclusively signalmen's work, only that brush under, over, and in signal wires or cable" (underscore in original).

The Board concludes from the evidence of record in this case that the Organization failed to show that the work here in dispute is reserved exclusively to the Signalmen's craft either by the language of the SCOPE Rule or by convincing past practice. Therefore, this claim must be denied. Third Division Award 29083 supports this conclusion.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.