

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32501
Docket No. SG-32889
98-3-96-3-241

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company - Pere Marquette District)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O-PM):

Claim on behalf of L. R. Leach, M. A. Wilkin, and R. G. Robertson for payment of 10 2/3 hours each at the straight time rate and two hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to install poles at South Lyon on February 17, 1995, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 15 (95-172). General Chairman’s File No. 95-12-PM. BRS File Case No. 9741-C&O (PM).”

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 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 chose to file a Submission with the Board.

This dispute arises out of Carrier's use of two Signal Department and two Electrical Department employees for a period of 32 straight time and six overtime hours to install poles on Carrier's right-of-way at South Lyon, Michigan, on the former C&O Pere Marquette District on February 17, 1995. The Organization alleges that Rule 1 (Scope) of the Agreement reserves the work of installing poles exclusively to the Claimants, who are Linemen assigned to Carrier's Communication Department. The claim was denied by the Carrier's Manager-Telecommunications on the grounds that because there was no communications work performed on the pole line in question, the Organization "failed to establish that the Agreement, past practice or tradition compels the Carrier to use the Claimants to perform the work in dispute to the exclusion of all other employees." The International Brotherhood of Electrical Workers requests that the Board deny the Organization's claim based on its contention that IBEW employees historically have performed the work in dispute and that the Organization failed to prove otherwise.

The parties' Scope Rule states:

" COMMUNICATION

RULE 1

This Agreement covers rates of pay, hours of service and working conditions of all employees specified in Communication Rules 101, 103, 104, 105 and 106, engaged in the installation and maintenance of communication facilities or equipment and performing work generally recognized as communication work, including employees in the United States classified under Communications Rule 104 (b) of this Agreement. This Agreement shall not be construed as granting to employees coming within its scope the exclusive right to perform the work of installing and maintaining other than railroad owned facilities or equipment."

The record developed on the property suggests that following the removal of all communication equipment from the pole line in dispute, the challenged work of installing new poles was assigned in part to several Signal Department employees who are also

represented by the Organization. Carrier contends that such assignment was logical and permitted under the Agreement, because no work requiring the services of communications employees was required. It asserts that installing poles, for whatever purpose, traditionally has been accomplished by numerous employees other than Linemen, including Road Electricians and Signalmen, as well as outside contractors.

The Organization rejects that contention and maintains that on this particular property, replacement of poles in the past has been accomplished solely by members of Claimants' class. In support, it points to the fact that the Carrier had previously submitted to it a proposal suggesting that it relinquish its rights to work on Carrier's pole lines in consideration for voluntary separation payments. It states that this proposal was rejected, and argues that to seek such a modification in a Rule is a reliable indicator that the Rule in question does not contain that which is sought by the proposed change.

The Board fully credits the salient principles underlying the Organization's contentions. Past practice, although often burdened with uncertainty, can be a useful aid in understanding what the parties intended when language is ambiguous but they have operated under it in a way that gives the disputed term clear substance. Broad acceptance of that well-recognized principle can be found in numerous Awards of this Board. For the following reasons, however, reliance on it in this case is misplaced.

As an initial matter, the language in dispute is undeniably general in nature and does not on its face grant to Claimants the exclusive right to install poles. Thus, even if examination of past practice is arguably warranted, it becomes the Organization's burden to establish by competent evidence that the Carrier has acceded over a period of time to a tradition and practice of assigning pole replacement work solely to its Linemen. When, as here, the contest for work jurisdiction is between Carrier employees of the same Organization, under the clear precedent of the Board, the Organization representing competing units will be held to an even higher standard of proof. On this record, the Organization has not carried that burden. Although it argues vigorously that pole work belongs to Linemen alone by custom, it has not produced in the case handling on the property the requisite facts to refute Carrier's insistence that a variety of personnel have been employed over the years to install poles on the PM District. And second, though not conclusive, the appearance of the IBEW as Third Party in Interest here, laying claim to the same work, at a minimum is consistent with Carrier's position on the past practice issue.

The Organization next argues that its rejection of Carrier's proposal to buy out its work establishes its ownership of pole installation. We agree that in seeking a change the Carrier normally acknowledges that it needs authority from the Organization to do what its proposal seeks. The application of that theory to the facts on this record however is doubtful. Carrier's position throughout the prosecution of the case was that the installation and removal of poles under the Agreement was never comprehended by its proposal, which concerned itself only with "a plan to remove all communication wire line facilities serving line of road operations." The language of the proposal itself merely describes the work sought to be eliminated as "maintain[ing] . . . pole lines within terminals which continue to support communication wires, cables, etc." The Organization's appeal on the property from initial claim denial characterized Carrier's proposal as a request "to give up all rights to work on the pole line." Its Submission casts the proposal in terms of an effort "to remove this work." If the proposal truly pointed at "all rights to work," it would have no evidentiary value in resolving the issue before the Board. If instead the proposal envisioned that the Organization would specifically give up pole installation work in consideration for separation payments, there is no hard evidence of that fact in this record.

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 25th day of March 1998.