

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32525
Docket No. SG-32810
98-3-96-3-135

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Chesapeake and
(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):

Claim on behalf of L. R. Leach and M. A. Wilkin for payment of 60 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 remove poles on the Baldwin Subdivision on January 3 and 4, 1995, and denied the Claimants the opportunity to perform this work. Carrier's File No. 15(95-127). General Chairman's File No. 95-06-PM. BRS File Case No. 9740-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.

This dispute arose when Carrier utilized employees from the Signal Department to remove poles from the right-of-way between Milepost 43.2 and Milepost 45.5 on its Baldwin Subdivision. By letter dated January 26, 1995, the Organization filed a claim on behalf of the Claimants. In that letter the Organization maintained that Carrier had violated the Scope Rule of the Agreement between the Parties.

The claim was denied on March 8 and appealed on April 5, 1995. Carrier again denied the claim, and it was subsequently progressed in the usual manner, including conference on the property on October 19, 1995. On March 1, 1996, the Organization served notice on the Board of its intention to file a Submission regarding the dispute. On that same day, the Organization sent the Carrier a group of statements purportedly demonstrating that the work in question had traditionally been reserved to employees from the Communication Department.

During the handling of this claim on the property, the correspondence is essentially a matter of claim and denial. At no time did the Organization suggest it had documentary evidence that the work in question had traditionally been performed by Carrier employees. As a consequence of the Organization's delay, the Carrier was deprived of an opportunity to consider the Organization's evidence and, perhaps, to dispute that evidence. For reasons not clear on this record, the Organization elected to employ the tactic of "lying behind the log" until well after the conference on the property. Such a tactic flies in the face of the entire reason for having a full processing on the property; to wit, to give the Parties ample time to examine each others' positions and, if possible, resolve the matter prior to submission of the dispute to the Board.

The Board will not break with long-established tradition and consider evidence submitted in this manner by either Party. The Organization failed in its burden of persuasion based upon evidence properly submitted on the record, and the instant claim is denied.

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.