

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32726
Docket No. SG-33509
98-3-96-3-1055

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of T.B. Rogers, S.A. Cox, W.E. Gunter, L.P. Grace, A.G. Smith, J.L. Blackwood Jr., C.C. Pierce Jr., W.E. Hinton Jr., R.P. Enfinger, R.L. Stansberry, K.L. Brown, L.D. Patterson Jr., G.L. Broadway, R.F. Bullock, T.J. Asher, J.L. Brown, C.E. Stewart, C.J. Kays, A.L. Brown, E.J. Ward and M.O. Stanfill for payment of 960 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized employees of an outside contractor to perform maintenance work on the signal system near Georgiana, Alabama, from September 18 to November 9, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15 (96-19). General Chairman's File No. 95-137-32. BRS File Case No. 9992-L&N.”

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.

Claimants are employed by Carrier in its Signal Department in Seniority District No. 6. Claimants assert Carrier violated the Agreement, particularly Rule 1 - Scope, when it used an outside contractor to perform work of removing brush and trees from underneath pole lines to eliminate signal problems being experienced due to trees and brush growing into the signal pole lines interfering with proper operation of the signal system by interrupting power and code line transmissions.

It is the position of the Organization that the work of eliminating signal problems by removal of trees and brush growing into the pole lines is maintenance work reserved to Signalmen by the Scope Rule of its Agreement.

Carrier responds that the Scope Rule is specific in its definition of the classification of the type of work to be performed in the maintenance of the signal system, and that nowhere does it mention the removal of trees from the railroad right-of-way being recognized as signal work.

Review of the on-property handling fails to reveal that the Organization contends that the removal of trees and brush from the railroad right-of-way is reserved to Signalmen. Rather, the Organization's claim and argument is limited to the removal of trees and brush growing into and interfering with the proper operation of the signal system and that this is work reserved to Signalmen by the Scope Rule. This fact is evidenced by statements made by the Organization in its initial claim letter dated November 10, 1995, reading:

"Item 3.

Starting with the date prior to September 18, 1995, the Carrier did hire a 'contracting Company' known as Asplundh Tree Service to assist in the removal of trees that were causing signal failures and signal delays due to the fact that these trees were extended into the signal code line, and, the signal line wire.

Item 4.

The pole line involved carrier only signal circuits such as power for signal equipment, Code lines, block repeater circuits, and control wires such as HD's"

Rule 1 - Scope of the parties' Agreement reads:

"This agreement covers the rates of pay, hours of service and working conditions of all employees, classified herein, engaged in the construction, installation, repair, inspecting, testing, and maintenance of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train controls; car retarders and car retarder systems; power operated gate mechanism; automatic or other devices used for protection of highway crossings; spring switch mechanism; electric switch targets together with wires and cables; train order signals in signaled territory and elsewhere within the limits of a signal maintainer's territory; power or other lines, with poles, fixtures, conduit systems, transformers, arresters and wires or cables pertaining to interlocking and signaling systems; interlocking and signal lighting; storage battery plants with charging outfits and switch board equipment; sub-stations, current generating and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes; carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work."

(Emphasis added)

The Board concurs with the Organization that the work of maintaining and repairing signals is work reserved to Signalmen. Thus, the question to be resolved is does the removal of trees and brush growing into the signal lines interfering with power and signal functions constitute "maintenance" of the signal system? We are of the opinion that it does as it is absolutely necessary to proper operation of the signal system to assure safe operation of trains.

Our opinion follows the principle adhered to by the Board over the years that the purpose of the work determines its assignment. (See Third Division Awards 19418 and 19525).

In further support of our opinion, we note in Third Division Award 23904, the Board held:

“Close reading of the Signalman’s Agreement indicates that it embraces the maintenance of pole line signal circuits, but the work performed on the aforesaid dates does not appear to constitute such maintenance. Trees and brush are obviously not part and parcel of signal pole lines and before pole line maintenance can be firmly established, it is necessary to demonstrate that trees and brush grew into the pole lines and interfered with or endangered signal operations. Since Claimants have not shown that these contingencies were present when the other employees performed the work, we are constrained by the facts of record to deny the claim. We take judicial notice that the Maintenance of Way Organization as an alleged third party of interest, filed a timely submission and we have carefully considered its arguments with respect to this issue.” (Emphasis added)

Facts in this record establish that trees and brush grew into the pole lines and interfered with signal operations.

Further support for the Board’s opinion is found in Third Division Award 29569 involving this Carrier and its Maintenance of Way Employees where the Board noted:

“In its initial response in the claim handling procedure, the Carrier noted that ‘this work was done only under the pole line, which falls within the Signal Department not the Maintenance of Way.’”

Having found a violation of Rule 1- Scope in the use of a contractor to clear the pole lines of trees and brush interfering with power and signal functions, we now turn our attention to the Organization’s request to compensate the Claimants 960 hours at the time and one-half rate equally divided among them.

The Organization asserts the Claimants were available to perform the work. Carrier counters that Claimants were fully employed and lost no wages and, therefore, were not available to perform the work.

The Organization does not dispute the fact that Claimants were fully employed during the period of the claim and lost no compensation resulting from the use of a contractor to perform the work. Further, the Organization presented nothing in support of its assertion that Claimants were available.

In comparable situations, the Board has held on many occasions that compensation of Claimants is not warranted. For example, Third Division Award 29202 held:

"While there is a basis for sustaining this claim, we note that Claimants were employed at the time. As this Board pointed out in Third Division Award 26174, the position that no compensation is warranted where Claimants are fully employed and suffer no loss has long been applied in the industry."

Third Division Award 29330 held:

"The Organization asserts that Claimants have lost a future work opportunity. Carrier denies this and asserts that Claimants were fully employed. The Organization does not dispute that the Claimants were fully employed on the Claim dates. The record contains no evidence of lost earnings by any of the Claimants.

In the absence of unusual circumstances, which are not present in this record, the entitlement to a monetary claim is a separate issue requiring independent proof of loss. Loss does not automatically flow from a finding of Agreement violation. No actual loss has been substantiated herein. Therefore, the monetary portion of the Claim is denied."

Third Division Award 18305 held:

"In regard to damages, we adhere to the principle that damages shall be limited to Claimants' actual monetary loss arising out of the Agreement violation and that this Board is not authorized to use sanctions or assess penalties unless provided for in the controlling Agreement. Since Claimants suffered no pecuniary loss in this instance, we will deny paragraph 2 of the Statement of Claim."

The record before the Board contains no evidence of lost earnings by Claimants. Accordingly, we will follow the precedent established by the Board in this industry and deny the claim for compensation.

Accordingly, while the claim that Rule 1 - Scope was violated is sustained, the claim for 960 hours compensation at the time and one-half rate is denied.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of August 1998.