

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32729
Docket No. SG-33700
98-3-97-3-162**

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 Chesapeake & Ohio
(Railway Company)**

STATEMENT OF CLAIM:

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

A. Claim on behalf of G.E. Lego, S.H. Willey, W.R. Meadows, W.L. Duncan, and J.L. Harvey for payment of 120 hours each at the straight time rate and 30 hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used other than covered employees to perform the covered work of removing brush and trees from underneath the pole line to eliminate signal problems on the New River Subdivision from November 22 to December 14, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15 (96-97). General Chairman’s File No. 96-25-CD. BRS File Case No. 10228-C&O.

B. Claim on behalf of G.E. Lego, G.C. Neely, W.R. Meadows, W.L. Duncan, and J.L. Harvey for payment of 48 hours each at the straight time rate and 12 hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used other than covered employees to perform the covered work of removing brush and trees from underneath the pole line to eliminate signal problems on the New River Subdivision from December 15 to December 22, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15 (96-95). General Chairman’s File No. 96-26-CD. BRS File Case No. 10229-C&O.

C. Claim on behalf of G.E. Lego, W.R. Meadows, W.L. Duncan, and J.L. Harvey for payment of 24 hours each at the straight time rate and 6 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used other than covered employees to perform the covered work of removing brush and trees from underneath the pole line to eliminate signal problems on the New River Subdivision from December 27 to December 29, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15 (96-96). General Chairman's File No. 96-27-CD. BRS File Case No. 10230-C&O."

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. Claimants assert Carrier violated the Agreement, particularly the Scope Rule, when it used non-covered employees to perform work of removing brush and trees from underneath pole lines to eliminate signal problems on the New River Subdivision in November and December 1995.

The record submitted indicates Carrier was experiencing problems with its signal system due to trees and brush that had grown into the signal pole line interfering with the operation of the signal system by interrupting power and code line transmissions.

Carrier engaged a contractor, Emery Tree Service, to cut and remove the trees and brush from underneath the pole lines to eliminate its signal system problems.

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

Carrier responds that historically the responsibility for control of brush and vegetation underneath the pole line has never been the domain of Signal Department employees.

We also note Carrier's position, as set forth in its Submission, that it was faced with an emergency situation affecting the safety of train movements and the integrity of the signal system. It also asserted therein that it lacked specialized equipment to perform the work.

The Board will give no consideration to Carrier's asserted emergency and lack of specialized equipment arguments for the simple reason that it did not raise these issues in the handling on the property. Circular No. 1 of the Board prohibits consideration of argument and material not made a part of the on-property handling.

Rule 1 - Scope of the parties' Agreement reads:

"This Agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair, and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including such work in signal shop, and all other work generally recognized as signal work. It is understood the classifications provided by Rules 2, 2½, 3, 4, 5, and 6 include all the employees of the Signal Department performing the work described in this rule."

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 this Board over the years that the purpose of the work determines its assignment. (See Third Division Awards 19418 and 19525).

In a comparable case involving the Brotherhood of Maintenance of Way Employees and this Carrier, it is noted that in defending against the BMWE's claim, the Third Division stated in Award 29569:

"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.'"

Study of the record of handling on the property convinces the Board that Carrier failed to prove its assertion with probative evidence that historically the responsibility for control of brush and vegetation underneath pole lines has never been the domain of Signal Department employees. To the contrary, as noted above, Carrier has recognized that the removal of brush and vegetation done only under the pole line falls to Signal Department employees.

Having found a violation of Rule 1 - Scope in the assignment of other than Signal Department employees to clear the pole lines of brush and vegetation interfering with power and signal functions, we now turn our attention to the Organization's request to compensate the Claimants as they would have been compensated if they had performed the work.

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 claims and lost no compensation resulting from the use of other than Signal Department employees 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 claims as they relate to compensation because other than Signal Department employees performed the work.

Accordingly, while the claim that Rule 1 - Scope was violated is sustained, the claims for compensation are 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.