

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32763
Docket No. SG-33312
98-3-96-3-824**

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

(Brotherhood of Railroad Signalmen)
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville &
(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 Jr., L.P. Grace, A.G. Smith, J.L. Blackwood Jr., C.C. Pierce, 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, C.E. Stewart, C.J. Kays, A.L. Brown, E.J. Ward and M.O. Stanfill for payment of a total of 1,707.94 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 31 and 32 and the Scope Rule, when it utilized outside employees and employees from another seniority district to perform the covered work of removing trees to repair and maintain the signal pole line in the Claimants' seniority district from July 22 to August 15, 1995, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 15(95-271). General Chairman's File No. 95-137-26. BRS File Case No. 9822-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.

This case involves the above named Signal Maintainers (Claimants) who have filed claim for payment of an amount equal to the man-hours involved when Carrier allowed a contractor and covered employees from another seniority district to perform the work of removing trees from Carrier's signal line.

On August 28, 1995, the Organization filed a claim maintaining that Carrier had violated the Agreement, particularly the Scope Rule and Rules 31 - Seniority, and 32 - Seniority Districts, by allowing a contractor, employees from another seniority district and a Signal employee from a former railroad, to remove trees from its signal power and code lines from M.P. 547.2 at Georgiana, Alabama, to M.P. 642 at Bay Minnette, Alabama, during the period of July 23 through August 15, 1995.

Carrier declined the claim, taking the position that the Scope Rule does not mention the removal or trimming of trees and/or brush, and that the work has never been reserved exclusively to Signalmen. Carrier further maintained that the work performed was done as an "emergency situation" when the signal system in that area was suspended at various times, in addition to the dispatching system, which was also placed under manual DTC blocks due to signal failures. In support of its position, Carrier contended that "a concentrated effort was mounted in order to reduce the downtime and effect repairs as quickly as possible," and pointed to Rule 18, paragraph (b), which provides, in pertinent part:

"Employees filling positions scheduled as subject to call under provisions of this rule will not be confined to work on any particular section or territory, except they will be confined to their own seniority district in cases other than covered by Rule 23 [Emergency Service]."

On November 6, 1995, the Organization restated its position in a claim submitted to Carrier's highest designated officer. Carrier denied the appeal, contending that the claim, as submitted, was improper in that no specifics were given as to the Claimants' loss. In that connection, Carrier advised the Organization that it had not proven that the disputed work was performed outside the regular hours worked by the Claimants, the only time they would have been available for work. Carrier further noted that

Maintenance of Way employees were also utilized to perform similar service, and "continue to file claims when Signal Department employees are utilized in this type of work." Therefore, according to Carrier, "neither group can claim exclusivity to the work." Finally, Carrier maintained that it is "allowed to conduct its business as necessary," as long as there are no forces furloughed and the necessary equipment is accessible with skilled employees available.

There is no dispute that Carrier utilized an outside contractor, employees assigned to a different seniority district, and a signal employee from another former property to remove trees from its signal power and code lines. Aside from Carrier's "emergency" affirmative defense, which is not persuasively established in this record, the crux of the Scope Rule aspect of the dispute is whether this work is covered by the Signalmen's Scope Rule, thereby reserving the work in dispute to Signalmen. According to the Organization, the work in dispute is reserved to the Signalmen by the "clear language" of the Scope Rule and by the purpose for which the work was performed. The assertion that the removal of trees or brush along Carrier's right-of-way is work exclusively reserved to Claimants finds no support in Agreement language. Nor, are we convinced that past practice or tradition compels Carrier to use Claimants to perform this work to the exclusion of all others. In fact, Carrier successfully argued that this work has been historically accomplished not only by Signal Department employees and Maintenance of Way employees, but outside contractors as well. On the point of reservation by contract or custom, practice and tradition, therefore, the Scope Rule claim also must fail.

However, Carrier's use of Signal employees from another seniority district for the same project is a different matter entirely. Agreement Rules 31 and 32 provide that seniority rights of employees shall be restricted to the territory as outlined in the Agreement. Carrier argued that an "emergency" situation existed, and "a concentrated effort was mounted in order to reduce the downtime and effect repairs as quickly as possible." The trees did not spring up full grown overnight and there is no evidence to support the defense that this was anything other than routine tree pruning and removal. Carrier presented no evidence which convinces the Board that the circumstances surrounding this dispute constituted an "emergency situation."

The Board has consistently held that Agreement-covered employees are entitled to work in their home seniority districts before Agreement-covered employees from outside the seniority district are called upon. See, for example, Third Division Awards 19460 and 29381. Claimants were entitled to perform the work in dispute in their

seniority district, and Carrier's utilization of employees from another seniority district is a clear violation of Rules 31 and 32. There is no dispute that Claimants held seniority in District #6 or that Carrier used Signal employees from another seniority district to perform this work on their assigned territory. Once Carrier elected to use Signal employees to perform a portion of this tree removal work, Claimants had priority entitlement to perform this work on their seniority district before any Signal employees from outside seniority districts.

The claim is sustained for violation of Rules 31 and 32 and Carrier is directed to compensate each Claimant for an aliquot share of the aggregate amount of monies paid to the outside Signalmen who performed the claimed work on the Claimants' seniority district. [According to itemized information submitted by the Organization on the property and unrefuted by Carrier, the eight District #5 employees worked a total of 462.28 hours on District #6 between July 22 and 27, 1995 and K. F. Jones from the Seaboard Coast Line Railroad worked 66.66 hours on District #6 during the same period.]

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 23rd day of September 1998.