

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33384
Docket No. SG-34657
99-3-98-3-321

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake
(and 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 C.E. Burcham for payment of 104 hours at the straight time rate and C. N. Turner and M. D. Knick for payment of 56 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from April 4 to May 21, 1997, on the Rivanna Subdivision and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(97-202). General Chairman’s File No. 97-107-CD. BRS File Case No. 10587-C&O.**
- B. Claim on behalf of M. P. Nause, D. J. Guntsch, and D. P. Egan for payment of a total of 20 hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line on June 10, 1997, at MP CTT 25.1 and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(97-203). General Chairman’s File No. 97-108-CD. BRS File Case No. 10588-C&O.**
- C. Claim on behalf of S. S. Forson, R. A. Grim, G. A. Overturf, R. A. Sagar, and J. E. Hatfield for payment of a total of 80 hours at the straight time rate, account Carrier violated the current Signalmen’s**

Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from May 28 to June 4, 1997, at MP CK 2.4, MP CD 23.6, MP CD 34.5, MP CD 59.9, and MP CD 54.6, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(97-204). General Chairman's File No. 97-109-CD. BRS File 10589-C&O.

- D. Claim on behalf of P.D. Neiderkahr, D. E. Long, and M.L. Daring for payment of a total of 45 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line on June 5 and 6, 1997, at MP CD 84.7, MP CD 92.6, MP CD 104.7, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(97-205). General Chairman's File No. 97-110-CD. BRS File Case No. 10590-C&O.
- E. Claim on behalf of R.E. Hambrick for payment of 1,640 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from February 24 to April 21, 1997, on the North Mountain Subdivision, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 15(97-111). General Chairman's File No. 97-46-CD. BRS File Case No. 10591-C&O.
- F. Claim on behalf of C. L. Petry, B. O. Chapman, J. R. Ward, and H. W. Damron for payment of 24 hours each at the straight time rate and eight hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from April 24 to 28, 1997, at MP 125.7, MP 97.6, MP 69.3 and MP 56.3, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(97-130). General Chairman's File No. 97-51-CD. BRS File Case No. 10592-C&O.
- G. Claim on behalf of C. N. Turner and M.D. Knick for payment of 304 hours each at the straight time rate, account Carrier violated

the current Signalmen's Agreement, particularly the Scope Rule, when it used a contractor to install new poles for the signal pole line from February 21 to April 3, 1997, on the Rivanna Subdivision and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(97-122). General Chairman's File No. 97-65-CD. BRS File Case No. 10593-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.

As evidenced by the Statement of Claim, this dispute involves seven separate and distinct instances in which the Carrier utilized the services of an outside contractor to set new poles in varying numbers and at different locations on the Carrier's property. From the on-property record, there is no basic disagreement relative to the actual work that was performed by the outside contractor. The contractor replaced existing poles with new poles.

Both parties rely on the Scope Rule to support their respective positions in the dispute. It reads as follows:

"RULE 1 - SCOPE

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 Organization argues that the pole lines here in question were used as signal pole lines. It argues that the pole lines and the poles that make up the pole lines are "vital appurtenances of the signal system." Therefore, it insists that the Scope Rule reserves all work on these pole lines - including the setting of replacement poles - to Signalmen. It contends that the use of an outside contractor to perform such work violates the principle which requires that work covered by the Collective Bargaining Agreement must be performed by the employees party to the Agreement. It insists that the "fully employed" argument advanced by the Carrier is not a valid defense inasmuch as the Claimants did, in fact, lose work opportunities because of the use of the outside contractor and should, therefore, be compensated for such loss of work opportunity. It cites Third Division Awards 29232, 32125 and 32421 in support of this principle.

The Carrier argues that the work of installing poles is not specifically mentioned anywhere in the Scope Rule and is not by custom, practice or tradition reserved exclusively to Signalmen. The Carrier points with favor to Third Division Award 32479 and insists that the work of setting poles has, in fact, been performed by several groups of employees including outside contractors. The Carrier contends that the Organization has not presented any evidence to support its claim to such work to the exclusion of others. In support of its their position in this regard, the Carrier points with favor to Third Division Awards 32596, 32525, 32501, 31629, 22031, 20538 and 20516. The Carrier also argued relative to the "fully employed" position of the Claimants and that they were not entitled to additional compensation in any event.

The record reveals, without serious contradiction, that the pole lines in question were historically communications pole lines with maintenance of the signal wires and pole cross arms being handled by Signal Department employees. Although the Organization argues that, at the time of the events here in dispute, the pole lines were used solely for signal purposes, there is nothing found in the on-property record to establish or support the position that Signalmen ever set any of the poles that made up the pole line.

Because of the less than specific language found in the Scope Rule, the Organization has the burden to prove that the claimed work accrues exclusively to its members. Bare assertions without more do not constitute proof (Third Division Award 32596). Therefore, the claims as presented must be and hereby are denied for lack of proof of exclusive performance by the Claimants.

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 13th day of July 1999.