

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33648
Docket No. SG-33968
99-3-97-3-453**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim on behalf of R.A. Farmer for payment of 32 hours at the straight time rate (plus the skill differential), account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to work on communications cable at Conway yard on October 9, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. SG-885. General Chairman’s File No. RM2854-2-496. BRS File Case No. 10317-CR.”

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.

On October 9, 1995 the Claimant was assigned and performed Signal Maintainer work for which he was compensated eight hours at his straight time rate. During that same period the Carrier utilized Radio Department employees, represented by the International Brotherhood of Electrical Workers, to locate communication cables. Once

located, the installation of the cables was performed by Signal Maintainers. However, because the Organization claimed the work performed by the Radio Department employees, the Claimant was paid an additional four hours at his straight time rate.

The Organization contends in this claim that the Claimant should be compensated for all of the time that the Radio Department employees performed work that belonged to it and therefore would have been work that the Claimant would have performed. The Carrier on the other hand argues that the Claimant was covered by the Hours of Service Act and, as such, any payment to him was limited to 12 hours. Thus, according to the Carrier, there was no violation of the Agreement. In reply, the Organization argues that the Claimant, although he is a Signal Maintainer, was not performing covered service under the Act and therefore the 12 hour limitation did not apply.

The Hours of Service Act provides that those individuals installing, repairing, or maintaining signal systems are covered by the Act without regard to whether the work in question is performed in the field or in the shop. This appears to be the case because the Act is intended to guard against a negative impact on safety due to fatigue. However, it also appears that the Act contemplate instances where the work in question will have such a minimal relation to traditional signal duties as to put it outside the scope of covered service.

There is no dispute in the instant case that on the day in question the Claimant was working as a Signal Maintainer and that the ordinary and regular work as a Signal Maintainer would appear to be covered service. At a minimum, we are unable to conclude or infer otherwise without further description in the record. Unfortunately, there is no such further description in this record. Because we cannot conclude to the contrary, and because the Organization bears the burden of proof in this matter, we conclude that the claim must fail as the Claimant's work on the day in question fell within the confines of the Hours of Service Act and he was properly compensated accordingly.

AWARD

Claim denied.

Form 1
Page 3

Award No. 33648
Docket No. SG-33968
99-3-97-3-453

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 16th day of November 1999.