Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35080
Docket No. SG-35241
00-3-99-3-105

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(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 CSX Transportation Company (former Louisville and Nashville Railroad):

Claim on behalf of J. W. Norcross, J. J. Caudill, J. B. Gunn, Jr., B. N. Collins, and K. L. Brooks for payment of 151 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 1, 31, and 32, when it used outside forces to install air pipelines for the operation of signal system switches at Chattanooga, Tennessee, between November 17 and December 12, 1997, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(98-125). General Chairman's File No. 98-208-2. BRS File Case No. 10766-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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employes was advised of the pendency of this dispute and chose to file a Submission with the Board.

On January 14, 1998, the Organization filed a claim on behalf of Claimants J. W. Norcross, J. J. Caudill, J. B. Gunn, Jr., B. N. Collins, and K. L. Brooks due to the Carrier's alleged violation of Rules 1, 31, and 32 between November 17 and December 12, 1997. The Organization contends that the Carrier directed and/or allowed five employees assigned to an outside contractor to perform work at the Wauhatchie Yard air plant. The Organization argues that the work in question is Scope covered work and that the work was performed on the assigned territory of the Claimants. The Organization contends that the five employees used by the outside contractor replaced and/or installed air pipelines for the operation of signal system switches that are used to control the movement of signal switches. The Organization argues that the total hours worked on this specific project was 755 hours (151 hours for each outside employee). The Organization contends that the work in question is contained within the Scope Rule and should have accrued to the Claimants. The Organization maintains that the Carrier violated the Claimants' seniority in the district in which the work was performed by the outside contractor's employees because those employees were not covered under the parties' Agreement. The Organization also contends that the Claimants were ready, willing, equipped, qualified, and available to perform the work and should have been afforded the opportunity to do so. The Organization further maintained that although it is recognized that some kinds of work are common to several classes of employees, it is well established that when a Carrier requires the performance of such work, it is the purpose of the work that determines which class of employees has preference to the work. The Organization argues that the work performed by the contractor's employees represents an integral part of the signal system and, therefore, is Signalmen work. In addition, the Organization argues that there is no requirement to demonstrate the exclusive performance of work when the work in question has been given to a contractor. Lastly, the Organization argues that the Carrier be required to afford each Claimant an additional 151 hours at time and one-half their respective rate of pay.

The Carrier denied the claim, contending that the work in question can be assigned to Maintenance of Way and Mechanical Department Crafts and that the air

plant is not exclusively used for Signal Department purposes. The Carrier argues that the Scope Rule clearly states that the air plants and supply lines must be used exclusively for Signal Department purposes, and such is not the case here. The Carrier contends that it is not required to use only Signal Department employees to maintain an air supply system that is used by almost every craft in the Wauhatchie Yard. In addition, the Carrier maintains that no restrictions have been negotiated with any craft on the disputed work. The Carrier argues that that portion of the air lines exclusively used to power air-operated switch machines was nominal and involved but a short tap into the lines used to charge train air brakes. Therefore, the Carrier argues that the Organization's claim for 755 hours enormously overstates any part of the work reserved to Signalmen under the parties' Agreement. The Carrier argues that the Organization failed to prove that a system-wide, exclusive right to the work in question exists by custom, tradition, and practice.

In its Third Party Response BMWE concurred with the position of the Organization. BMWE maintains that the Board should sustain the Organization's claim in full, which would not conflict with Agreements in effect between BMWE and the Carrier. BMWE argues that the Organization has the contract right to maintain signal systems and that part of that maintenance may include the installation of air lines for operation of signal system switches. BMWE contends that air line installation/maintenance is a classic example of overlapping craft jurisdiction. BMWE also maintains that the Carrier's insistence on a Third Party Notice is nothing but an attempt to pit one union against another in an attempt to free the Carrier from the contractual obligations it has to both parties. BMWE further argues that the case at hand is a contracting out of work case and does not involve a dispute between crafts and that the Carrier disregarded its obligations to both crafts by contracting out the work to an outside contractor.

The Carrier replied to the Third Party Response, contending that BMWE's position actually supports the Carrier's position that no craft maintains exclusivity to perform the work in question. The Carrier asserts that it had the authority to use its own discretion in assigning the disputed work and that no restrictions exist in assigning the work to a particular craft or class of employees.

The Board reviewed the record in this case, and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it used outside forces to install air pipelines for the operation of signal system switches at

Chattanooga, Tennessee, between November 17 and December 12, 1997. The Carrier demonstrated that the Agreement at issue reserves only those air plants that are exclusively used by Signal Department employees. The Carrier has shown that the portion of the air lines exclusively used to power air-operated switch machines was nominal, involving only short taps into lines used to charge train air brakes. The Board finds that the Carrier is also correct that the claim for 755 hours totally overstated any part of the work that would have possibly been reserved to signal employees under the Agreement.

The Board also finds that the Classification of Work Rule does not make any special reservation of the contested work to Signalmen. Consequently, we find that there was no violation of the Agreement and the claim must be denied.

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 15th day of November, 2000.