

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35464
Docket No. SG-35410
01-3-99-3-297

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 - Pere Marquette)

STATEMENT OF CLAIM:

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

Claim on behalf of L.T. Miller, S.D. Perry and R.G. Robertson, for payment of two hours and 40 minutes at their time and one-half rates, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rue, when it used non-covered employees to remove and install radios on locomotives, on January 21, January 25, and February 4, 1998. Carrier’s File No. 15(98-185). General Chairman’s File No. 98-52-PM. BRS File Case No. 10954-C&O(PM).”

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 Locomotive Engineers was advised of the pendency of this dispute, and chose to file a Submission with the Board.

As can be seen from the Statement of Claim, *supra*, this case involves three separate dates on which someone other than a Signalman was used "to remove and install radios on locomotives."

From the examination of the case record, the individual claims allege that a "yard crew" removed a radio from one locomotive and installed the same radio on another locomotive (January 21); a "yard crew" installed a radio on a locomotive (January 25); and "the crew of Y-245" removed a radio from one locomotive and installed the same radio on another locomotive (February 4). The specific member of the "yard crew," i.e., the Engineer or the Trainman, who actually performed these services is not identified by the Organization. The only reference is to a "yard crew."

The BLE's Third Party Response expressed the opinion that "the work of installing or removing locomotive radios is not incidental to the craft of locomotive engineers (nor, to our knowledge, that of conductor or trainman)."

Because there is no identification in this case file to establish that the Locomotive Engineer, in fact, performed any of the challenged services and because, from the BLE's statement, it has no first-hand knowledge relative to the Trainmen who made up the remainder of the "yard crew" in question, the Board finds nothing in the Third Party Response that is of value to our determination of the instant disputes.

The Organization's argument in this case is centered on its Scope Rule which reads, in pertinent part, as follows:

**"COMMUNICATION
RULE 1**

This Agreement covers rates of pay, hours of service and working conditions of all employees specified in Communication Rules 101, 103, 104, 105 and 106, engaged in the installation and maintenance of communication facilities or equipment and performing work generally recognized as communication work, including employees in the United States classified under Communication Rule 104(b) of this Agreement.

This Agreement shall not be construed as granting to employees coming within its scope the exclusive right to perform the work of installing and maintaining other than railroad owned facilities or equipment."

It is the Organization's position that the language of this Scope Rule reserves the "installation" of radio equipment on locomotives to Signalmen. It contends that there is no need to prove exclusivity of performance inasmuch as the Rule language guarantees BRS - represented employees the right to perform such work. In addition, the Organization asserts that there is more to replacing a locomotive radio than merely "shoving the radio into a slot." It insists that there are several checks and tests that should be performed to insure that the equipment will function as intended.

For its part, the Carrier argues that the Scope Rule is general in nature and does not reserve exclusive right to Signalmen to perform work of the type here involved. The Carrier insists that several classes of employees have on a regular basis placed and/or removed locomotives radios and/or moved them from one locomotive to another in the course of normal day-to-day operations. The Carrier further argues that the actual work here involved is a minor, easily performed task that falls under the "de minimis" principle. Finally, the Carrier states that the first two claim dates are procedurally defective because they were not appealed by the Organization in a timely manner.

After reviewing the respective positions of the parties and considering their respective contentions, the Board is convinced that the "time limits" argument made here is neither convincing nor dispositive of the two mentioned claim dates. It is rejected.

During the presentation of this dispute, the Organization cited with favor the opinion expressed in Special Board of Adjustment No. 894, Award 1544 in which an engine crew was compensated for moving the radio from one locomotive unit to another. The Board reviewed that Award and finds that it involved considerably more than the simple act of moving a radio from one locomotive unit to another. The decision reached in Special Board of Adjustment No. 894, Award 1544 is not convincing or dispositive in this case.

On the other hand, the Carrier directed the Board's attention to Third Division Award 26671 involving this Organization in which an Electrician removed a radio power pak from one locomotive and placed it in another. In that Award, the Board held

that “. . . the language of the Scope Rule is not specific in its terminology concerning radios and the work herein; it is silent with regard to the interchange of power paks.” The Board further held that “the work was of a de minimis variety. . . .”

From the Board’s review of the circumstance in the instant case, there is no evidence to prove that there was an “installation” involved in these situations. Neither is there any evidence to support the Organization’s contentions that several attendant tests and/or checks were, in fact, performed on the radio equipment by the individuals who placed the radios on the locomotives. The relocation of the radio equipment from one locomotive to another was a task that could be and was easily performed by the unspecified member of the “yard crew” who performed the service. Such performance did not violate the parties’ Scope Rule.

This conclusion does not plow new ground. In addition to the opinions set forth in Third Division Award 26671, the decision reached in Second Division Award 12476 involving a situation that is strikingly similar to that found in this case is convincing and dispositive of this case. Therefore, the claims are 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 22nd day of May, 2001.