

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35548
Docket No. SG-35572
01-3-99-3-486

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (B&O):

Claim on behalf of W. Halcomb, D. L. Martin, F. R. Moore, D. L. McClure and H. L. England for payment of 190 hours each at their respective straight time rates and 60 hours each at their respective time and one half rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used a contractor from March 16 to June 9, 1998, to cut brush under the pole line between MP.BC.86 and MP.BC7 on the Indiana Subdivision which is part of Claimants' regular assignments. Carrier's File No. 15(98-274). BRS File Case No. 10880-B&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 Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute and chose to file a Submission with the Board.

The general principles governing resolution of the brush cutting disputes currently under consideration by the Board are set forth in detail in Third Division Award 35529. In sum, (1) the Organization filing the claim has the burden to demonstrate a violation of the Agreement; (2) brush cutting in general along the Carrier's right-of-way is BMW scope covered work; (3) the cutting of brush that interferes with signal or communications lines and related equipment is BRS scope covered work; (4) the cutting of brush under the pole line that does not interfere with signal or communications lines and related equipment falls under BMW Scope Rules; (5) where outside forces are used, the relevant contract provisions governing the use of such forces will be applied and assertions of the need to show exclusive performance of the work will not defeat an Organization's claim; (6) with respect to asserted emergencies, the Carrier has the burden to demonstrate the existence of an emergency, which requires it to show the existence of an unforeseen combination of circumstances that calls for immediate action, but where ordinary track maintenance could have prevented the situation, no emergency exists; (7) where Agreement violations have been demonstrated, adversely affected employees will be made whole at the appropriate contract rate on the basis of lost work opportunities and irrespective of whether the employees were working on the dates of the demonstrated violations; and (8) where violations have been demonstrated, the disputes will be remanded to the parties for determination of the number of hours attributable to the improperly assigned work taking into account the specific type of work involved, with the Board retaining jurisdiction to resolve disputes over remedies.

In this case, on the property, the Organization asserted that the Carrier used a contractor to clear signal wires or pole lines from potential grounds and F.R.A. violations. The Carrier responded that the outside contractor was used to clear the right-of-way, which is work claimed by BMW. According to the Carrier, however, it recognized that "Current Awards of the NRAB have held that clearing brush from beneath pole line, which is interfering with signals, is work which accrues to BRS employees, however, you should not construe that to mean that clearing right-of-way

accrues to BRS employees just because a pole line is involved.” The Organization responded that the brush that was cut by the contractor was in the signal line wires.

It is not clear from this record what kind of brush cutting was performed by the contractor. The Carrier’s statement on the property refers to general right-of-way brush cutting, while the Organization refers to brush cutting that removed brush in the signal line wires. The burden in this case is on BRS to demonstrate that the work performed by the contractor was the cutting of brush that interfered with signal or communications lines and related equipment. We cannot sufficiently determine from this record that the brush had grown into the signal or communications lines. At best, the record is in conflict. A record in conflict on the material facts is insufficient to meet the Organization’s burden.

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 24th day of July, 2001.