

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35549
Docket No. SG-35594
01-3-99-3-515

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 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 Co. (former Louisville & Nashville Railroad):

Claim on behalf of G. E. Fluhr, D. B. Puckett, J. W. Lee, T. G. Mattingly, T. M. Nalley, R. C. Meador, M. E. Bagwell, D. J. Witherspoon, R. D. Lightfoot, and W. T. Sorg for payment of 1278 hours at the time and one-half rate to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rules 31 and 32, when it used outside forces to remove trees and brush from the signal pole line Mile Post 158 to Mile Post 174, April 6 through May 22, 1998 and continuing for the term of the violation, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(98-300). General Chairman’s File No. 98-13-11. BRS File Case No. 10892-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 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, the Organization alleged that the Carrier used an outside contractor to cut under the pole line where tree limbs were interfering with signal wires and causing signal failures and delays as a result of the tree limbs extending into the signal code line and signal line wire. On the property, the Carrier disputed the Organization's assertion concerning interference with the signal wires by stating:

“ . . . [Y]ou contend that there was interference to the signal wires, however, your appeal is void of any evidence to support that position. In fact, there is no reason to believe that the vegetation created a signal problem of any sort. In any event, your appeal is void of such a showing.”

It is not clear from this record what kind of brush cutting was performed by the contractor. 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.