

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36238
Docket No. SG-36341
02-3-00-3-582

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of J. T. Karp, J. M. Stone, J. H. Foulks, M. A. Slaper, and J. Brooks for payment of 90 hours each the straight time rate of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed non covered forces to paint over graffiti on signal houses and cases at various locations in May and June of 1999. Carrier File No. NEC-BRS(S)-SD-840. General Chairman's File No. JY 3288-102-1199. BRS File Case No. 11229-NRPC-S.”

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 not to file a submission with the Division.

This claim protests the Carrier's use of B&B forces in an established Right-of-Way Clean-Up gang to wash away or paint over graffiti on signal houses and cases as a violation of the Signalmen's Scope Rule, which provides, in pertinent part, that Signal Department employees are engaged in all work in connection with the maintenance of all signals and signal instrument cases. The issue is whether removing graffiti on signal structures constitutes maintenance of them.

The record reflects that the Carrier implemented a Right-of-Way Clean-Up Program in the Northeast Corridor to pick up trash, wash away or paint over graffiti on bridges, buildings and other structures along the right-of-way, including signal boxes, cases and huts, and manned it with B&B Mechanics. It is undisputed that on various dates in May and June 1999 some signal boxes were painted over by this gang and that, sometime after initiation of this claim, such work stopped.

The Organization argues that its Scope Rule covers all work in connection with the maintenance of signal equipment, including boxes, cases and huts, and that, although it is not claiming exclusivity with respect to painting in general, it has always performed painting of signal equipment. The Organization cites Signal Department AMT-23 Rule 19, which requires that the care of buildings and surroundings assigned to the C&S Department be kept in good order, and Rule 73, which cautions that extreme care must be taken when painting to prevent paint from settling where it may adversely affect the mechanical operation of signal equipment, to support its assertion that the work in issue was the responsibility of the C&S Department. It notes the dates and locations where the Clean-Up gang performed work, and requests compensation to its members for such work.

The Carrier contends that eradicating graffiti does not rise to the level of maintenance of signal and communication structures, as it does not extend the life of, or prevent damage to, the structure or its components, and is not a function reserved exclusively to the Signalmen under the Scope Rule. The Carrier posits that the AMT-23 Rule book is not part of the Agreement, and cannot form the basis for a violation. It asserts that there was no intention to replace necessary maintenance and repair work accruing to Signalmen by eradicating graffiti, and no proof that any delay in

such functions were a result of the work in issue. The Carrier also argues that the claim is excessive as it includes all hours worked by the Clean-Up gang in certain locations, and does not specify the amount of time spent on signal-related equipment as opposed to other right-of-way clean-up.

A careful review of the record convinces the Board that the Organization sustained its burden of proving a violation of the Scope Rule in this case. That Rule reserves all work involving the maintenance of signals and signal cases to the C&S Department. The parties have further elucidated their intention concerning the coverage of the Scope Rule by effectuating department Rules concerning the manner in which covered work is to be performed. Rule 19 requires that buildings and surroundings be kept in good order by the C&S Department. Rule 73 speaks specifically about the manner in which painting is to be performed on such equipment so as not to affect the electrical, optical and mechanical characteristics of the apparatus or equipment. While general painting work may be performed by B&B employees, it appears that the parties intended that the painting of signal equipment be dealt with specifically by C&S employees with expertise in the maintenance of such equipment. Regardless of whether the Carrier would consider eradicating graffiti on signal equipment to be incidental to the general clean-up function of the gang, the fact remains that by adopting specific Rules, the parties have interpreted the scope of the C&S Department's maintenance function to include painting signal boxes and equipment. As there is no dispute that such work was performed by B&B employees on the claim dates, the claim alleging a violation of the Scope Rule has merit.

As the Organization failed to particularize what portion of each day was actually spent by B&B forces on signal equipment, as opposed to other clean-up functions, the case is remanded back to the parties to ascertain the appropriate monetary remedy to be paid to the Claimants.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of September 2002.

NATIONAL RAILROAD ADJUSTMENT BOARD – THIRD DIVISION

CARRIER MEMBER'S DISSENT TO AWARD NO. 36238, DOCKET MW-36341

The majority determined in this case that covering graffiti constitutes "maintenance" of signal equipment and that the Scope Rule was violated when such action was performed by other than Signal Department employees.

Without reiterating all that was stated in both the written submission and oral argument, the fact remains that the employees failed to show that covering graffiti extended the life of the signal equipment or caused delay in the performance of normal maintenance of that equipment. In the absence of such proof, the claim should have been rejected.

Painting over graffiti is no more maintenance of the equipment than was the initial application of that graffiti. For this reason, we respectfully dissent to the majority opinion in this case.

A handwritten signature in cursive script, reading "L. D. Miller", written in black ink. The signature is positioned above a horizontal line.

L. D. Miller
Carrier Member