

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37084
Docket No. SG-36049
04-3-00-3-181

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company
((former Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of E. P. Taylor, E. C. Hines Jr., and W. E. Whitesell for payment of 110 hours at the straight time rate and 4 hours at the time and one-half rate, each, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when in January 1998 (sic), it allowed non-covered employees to install antenna/waveguide system, mount radio enclosures, run conduit to signal building, pull cable (install in) in appurtenance conduits, install radios and peak the radio paths at various Centralized Traffic Control (CTC) points between Addis and Avondale, Louisiana, and deprived the Claimants of the opportunity to perform this work. Carrier File No. 1177184. General Chairman's File No. 99-05-T-S. BRS File Case No. 11157-MP."

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 International Brotherhood of Electrical Workers was advised of the pendency of this dispute, and chose to file a Submission with the Board.

Claimants E. P. Taylor and E. C. Hines, Jr. were employed as Senior Communication Technicians and Claimant W. E. Whitesell was employed as a Communications Maintainer when on 11 separate dates in January 1999, the Carrier utilized a crew of four Communications Department employees represented by the International Brotherhood of Electrical Workers (IBEW) to perform the work as outlined in the Statement of Claim, supra.

The claim was denied by the Carrier for two reasons, namely:

1. "Note 2. of the Scope rule encompasses every item for which you are claiming encroachment."

and

2. "Second, the Claimants named by the Organization would not perform this work. *** Had BRS employees performed the work in question, it would have been BRS gang employees, not the technicians named."

As noted above, the IBEW filed a Submission with the Board under date of February 18, 2003. Neither the Petitioner nor the Respondent submitted any response or rebuttal to the Third Party's Submission. Therefore, the Third Party's statements are accepted by the Board at face value.

The IBEW's presentation to the Board was both candid and forthright. It acknowledged that at the time during which the IBEW-represented employees were being used to perform the work in question, the IBEW Communications Department employees had no contractual right to perform such work. It frankly stated that:

" . . . when the violation occurred on the dates of January 4, 5, 6, 7, 8, 9, 10, 11, 22, 23 and 24, 1999, the work performed by the IBEW indeed belonged to the BRS Communications Department."

The Board is convinced by this unrefuted admission that the work in question was indeed wrongfully assigned to employees outside of the scope of the Signalmen's Agreement.

This conclusion leaves the Board to rule on only the Carrier's contention that the named individuals were not the proper Claimants. In this regard, the Board finds comfort in the logical conclusion reached in Third Division Award 29313, involving the same Carrier, in which the Board held:

"This Board has long held that it is of no concern to Carrier whom the Organization names as Claimant (see Third Division Awards 7298, 10690, 18557 and many others)."

The Carrier erred when it improperly assigned the disputed work to employees not covered by the Signalmen's Agreement. There is not even a hint in the case record to suggest that the named Claimants were incapable of performing the work in question. The only possible conclusion is that for its violation the Carrier must accept the expense. The claim as presented is sustained.

AWARD

Claim sustained.

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 21st day of July 2004.