

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37237
Docket No. SG-37664
04-3-03-3-6**

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of R. L. Cooper and J. S. Anderson, for 50 hours straight time and 10 hours at the time and one-half each at their respective rates of pay, account Carrier violated the current Signalman’s Agreement, particularly the Scope Rule, when it used outside contractors to cut trees and brush that was interfering with the pre-view of the Southward Absolute Signal N.E. Miami/Plantation from October 8, 2001, through October 15, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 02-0038. General Chairman’s File No. SCL-02-22-02A. BRS File Case No. 12418-SCL.”

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.

The Claimants were assigned to Signal Gang No. 7T52 at the time this dispute arose. Commencing October 8 through October 12, 2001, outside contractors cut trees and brush along the right-of-way. Thereafter, on December 7, 2001, Messrs. Cooper and Anderson submitted two claims each, in which it was alleged that: "4 men from outside contractor used at SAS NE Plantation to remove trees and brush from blocking view of signal." On January 2, 2002, the claims were denied by four letters in which the Carrier stated:

"Our investigation of your claim reveals that an outside contractor did, in fact, cut brush along the railroad tracks in the vicinity of the SAS NE Plantation. This property is owned by the State of Florida, DOT and they are responsible for any and all brush cutting, not CSX. However, a signalman was present during this cutting to ensure that the contractors were clear of the track when it became necessary to run a train."

In a subsequent appeal to the Carrier's highest designated officer, the Organization maintained that the Carrier had "deliberately disregarded the Agreement" when it assigned covered work to an outside contractor. Specifically, the Organization asserted that: "The Claimants are entitled to the work of maintaining the line of sight of the signals and should be compensated for this loss of work opportunity for the amount of time the contractor was performing the covered services."

In his final denial of the claim, dated April 2, 2002 Senior Director – Labor Relations J. H. Wilson stated:

"In this case, the Organization's claim fails on several fronts. The Organization has not offered any probative documentation that the work at issue was interfering with any wires or related signal apparatus on the pole line. In fact, the Organization fails to mention if there were line wires at the location in dispute. Indeed, the signal system was operating properly and was not adversely affected in any manner whatsoever. The fact that tree limbs and brush obscured the

view of a signal does not imply that this brush was interfering with any portion of the signal system. Clearing of the right-of-way is work covered under the BMW Scope."

The claim was discussed in conference on June 27, 2002 wherein the parties maintained their respective positions.

As in any contract dispute, the burden is on the Organization to demonstrate that a violation of the Agreement occurred, premised upon probative record evidence. In these specific circumstances, it was incumbent upon the Organization to prove that the work in dispute, that of clearing trees and brush along a right-of-way, is BRS Scope covered work. However, the record demonstrates that the right-of-way property upon which the disputed work took place belongs to the State of Florida and, therefore, falls under the auspices of the State of Florida DOT. Nor is there any record evidence which indicates that the trees and brush the Florida DOT removed was interfering with the Carrier's signal or communications lines, or any related equipment.

Under the circumstances, the Carrier's denial of the claim on its merits because tree and brush cutting is not reserved to Signal forces by Agreement language or historic practice is persuasive, and therefore, this claim must be 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 27th day of October 2004.