

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37310
Docket No. SG-37703
04-3-03-3-40

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Clinchfield
(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 D. L. Love, E. W. Sell, III, C. A. Hensley and M. R. Hillman, for six hours each at their respective straight time rates of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed employees not covered by the Agreement to install propane tanks for switch heaters at North and South Sevier, MPZ 210.3 and 208.9, on December 6, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(02-0048). General Chairman's File No. 090401. BRS File Case No. 12432-CLINCH."

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, but chose not to file a Submission with the Board.

This is a dispute over the December 6, 2001 installation of two propane tanks by BMWWE-represented employees. The Organization asserts that this work is covered by its Scope Rule, and that BRS-represented employees have the "exclusive right to perform this work."

In its December 16, 2001 claim, the General Chairman alleged that the Carrier violated the Scope Rule when it allowed Maintenance of Way employees to install propane tanks for switch heaters at North and South Sevier Mile Post Z 210.3 and 208.9. In its January 11, 2002 denial of the claim, the Carrier stated, in pertinent part:

"The claim is centered around the fact that MOW forces installed two propane tanks at Sevier, NC for the purpose of providing fuel for the two switch heaters that were recently installed at that location. The switch heaters were installed by signal personnel, and subsequently have been maintained by signal personnel. The Carrier maintains that the setting, removing, filling, and all work associated with the propane fuel tanks themselves is not work that is specifically covered by your current agreement, although the installation and maintenance of the switch heaters themselves, is work covered by your agreement."

In subsequent correspondence dated May 1, 2002, the Carrier further asserted that:

". . . the Carrier agrees that the current CBA directs employees represented by the BRS to install, repair, recondition, dismantle,

inspect, test and maintain electric and gas switch heaters. However, that is not the work at issue in this case. The work of setting a fuel tank is not work that exclusively accrues to BRS represented employees. Propane tanks store fuel to supply power to a variety of different types of equipment and are not intrinsic to switch heaters. BRS Scope covered employees maintain the components and other appurtenances of a switch heater that are inherent to its function. Therefore, the Carrier did not violate the collective bargaining agreement in this instance. Moreover, the Organization has not offered any probative evidence that the track workers performed any work outside of setting the fuel tanks.”

The Organization maintains that the work in dispute accrues exclusively to BRS Agreement covered employees. However, in the circumstances, that stance is without contractual support. The Scope Rule is general in nature, and does not specify which work functions are exclusively within the jurisdiction of the craft. Absent specific mention of “propane tank installation” in the Agreement, the burden of proof is on the Organization to show that the system-wide, exclusive right to such work exists by custom, tradition, and practice. In this dispute, the Organization was unable to shoulder that burden.

The record demonstrates that four Maintenance of Way employees installed two large propane tanks at Sevier, North Carolina, for the purpose of providing fuel for two switch heaters that were also recently installed at that location. The record further demonstrates that subsequent to the installation of the propane tanks, BRS-represented employees “maintained the components and other appurtenances of a switch heater inherent to its function.” Under the circumstances this claim must be denied.

AWARD

Claim denied.

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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 21st day of December 2004.