

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37914
Docket No. SG-37533
06-3-02-3-578**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of D. H. Morgan and J. T. Windschitl, for 248 hours straight time and 212.5 hours at time and one-half of the Signal Maintainer's rate of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed outside contractors to remove brush and trees from under the pole line between MP 25 and MP 48.1 on the Altoona Subdivision, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1281607. General Chairman's File No. Nscope-219. BRS File Case No. 12273-UP.”

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.

On August 21, 2001, the Organization filed the above-referenced claim. The stated basis for the claim was the Carrier's alleged assignment of the removal of brush and trees from a section of the Carrier's signal pole line on its Altoona Subdivision.

The Carrier denied the claim by letter of October 15, 2001. It maintained that there was no Scope Rule in the Agreement reserving the work at issue to Signalmen. In its October 29, 2001 appeal, the Organization quoted the first paragraph and Section 2 of the Scope Rule, which read as follows:

"This agreement governs the rate of pay, hours of service and working conditions of employees in the Signal Department, who construct, install, test, inspect, maintain or repair the following:

* * *

2. High tension or other lines of the Signal Department, overhead or underground, poles and fixtures, conduits, transformers, arrestors and distributing blocks, track bonding, wires or cables, pertaining to railroad signaling, interlocking, and other systems and devices listed in (1) above."

The Organization further noted that it was Signalmen who found brush and tree limbs touching open pole wires and, accordingly, it was not proper for the Carrier to then contract out that work when it was cited for the infraction by the FRA.

Despite the Organization's protestation to the contrary, there is nothing in either the Scope Rule, or in the historical past practice between the parties to suggest that brush removal (even if leaning up against what are apparently signal lines) is reserved exclusively to Signalmen. In its December 17, 2001 denial of the Organization's appeal, the Carrier asserted that brush cutting on the property had been done by Maintenance of Way forces and outside contractors. Nothing in the record contradicts the Carrier's position on this point.

Form 1
Page 3

Award No. 37914
Docket No. SG-37533
06-3-02-3-578

In light of the foregoing, the Board has no choice but to deny the claim.

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 22nd day of August 2006.