

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38002
Docket No. SG-37733
06-3-03-3-74

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
(Alton and Southern Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General committee of the Brotherhood of Railroad Signalmen on the Alton and Southern (A&S):

Claim on behalf of R. L. Pratt, J. R. Fitzgerald and G. M. Maxwell, for eight hours each at their respective rates of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed a contractor to install a utility pole on February 25, 2002, at the East End of Carrier's property and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1301526. General Chairman's File No. S-SR-257. BRS File Case No. 12499-A&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.

The incident precipitating this case is not in dispute. On Monday, February 25, 2002, the Carrier hired an outside contractor to install a utility pole at the East End of the Alton and Southern Railway Company property. The Organization filed a claim on February 26, 2002. The Organization contended that its Scope Rule covers the work at issue and the Claimants, who were not registered absent and were available, should have been used. The pertinent part of the Signalmen's Scope Rule reads as follows:

"This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department engaged in the construction, installation, repair, dismantling, inspection, testing and maintenance, either in the signal shop or in the field of the following:

(a) . . . wires, overhead and underground lines and cables, poles and other appurtenances and equipment, conduit and conduit systems, pipe line and pipe line connections . . . used in connection with the systems and devices covered by this agreement."

By letter of March 15, 2002, the Carrier denied the claim, stating:

"I am in receipt of your claims letter of February 26, 2002 for Mr. R. Pratt, Mr. J. Fitzgerald and Mr. G. Maxwell.

I have reviewed your current agreement and found no basis to support your claim.

Claim denied."

The Organization appealed the Carrier's denial on March 25, 2002, reiterating its position that the Scope Rule had been violated. In addition, it protested the form of the Carrier's denial. Specifically, the Organization objected to the total absence of any stated reasons for the Carrier's denial of the claim. It noted that Rule 700 (a) provides that should a claim be disallowed, "... the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim . . . in writing of the reasons for such disallowance." The Organization pointed out that Rule 700 also provides that if the claimant is not so notified, "... the claim . . . shall be allowed as presented."

In its denial of the Organization's appeal, the Carrier contended that its initial declination was sufficient to satisfy the Agreement, and that various Boards had agreed with the Carrier's position on this matter. It maintained that stating that it had reviewed the Agreement and found no support for the Organization's position was a sufficient denial to meet the requirements of Rule 700 (a). The Carrier further contended that the issue of contracting out the work at issue had already been decided in Third Division Award 33016, and alleged that "... for the same reasons set forth in that award, the use of contractors was necessary here, too."

While the Carrier's initial declination can most charitably be described as "bare bones," it is true that a host of Boards have found that such a statement is a sufficient response to an Organization's claim that the Agreement has been violated. However, in this case, the matter of whether the work at issue was covered under the Scope Rule, and if so, were the Claimants entitled to do the work remains in dispute. In its denial of the Organization's March 25, 2002 appeal, the Carrier contended that it was forced to contract out the work for the same reasons set forth in Third Division Award 33016. Yet the work at issue there was performed some six years before the work at issue here, and the Carrier provided no concrete evidence on the record that the conditions that gained it a positive result in the prior decision obtain here. Further, the Organization has shown on the record that there has been at least one occasion in which necessary equipment was leased from a contractor to enable Signalmen to perform the work in question.

Absent any evidence beyond bare assertions by the Carrier, the Board is not about to assume that the conditions existing in 1995 were identical to the conditions existing in 2005. We are not privy to the fact pattern in that case, and we make no judgments regarding the Board's decision thereon. Considering all the evidence presented in this case, there can be little doubt that the work at issue here is encompassed by the language of the Scope Rule. The Carrier has not shown on this record any credible reason why the work was not given to the Claimants, who were available and able to work. Accordingly, the claim is sustained.

AWARD

Claim sustained.

Form 1
Page 4

Award No. 38002
Docket No. SG-37733
06-3-03-3-74

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 25th day of October 2006.