

PARTIES TO DISPUTE: Baltimore & Ohio Railroad Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: 1. Carrier violated the effective Agreement when, on June 24, 25, 26 and July 1, 1969, it assigned two Signalmen on each of these dates and the Signal Gang Foreman on June 26 to the cutting of brush beneath the wires from Pataskala, Ohio between Poles 119-10 and 113-12.

2. Carrier shall now compensate Track Foreman J. A. Ruff and Trackmen J. O. Hickman and M. A. Willey in the amount of 72 hours, equally divided, at their respective rates of pay account of this violation of the Agreement.

OPINION OF BOARD: There is no dispute concerning the basic facts in this case. While conducting an Insulation Resistance Test, I. C. C. Test 136.108, the Signal Inspector found that some of the signal control circuits failed to meet the minimum test requirement due to brush fouling the lines in the area covered by the claim. Signalmen were assigned to cut brush from the lines so that the minimum test could be met.

In denying the claim the Carrier relied, in part, upon the allegation that the Scope Rule of the Agreement was general in nature and did not reserve such work as involved herein exclusively to Maintenance of Way forces and cited

several prior Awards in support of this position. In essence, these Awards reiterated the principle that, in the face of a general type Scope Rule, the burden of proof rests with the Petitioner to show that questioned work belonged to him by custom and past practice.

However, in the instant claim we note from a Carrier letter dated October 21, 1969 the following statement:

"We have carefully investigated this case and we find that the Signal employees did not do general cutting of brush or mowing of right of way which is customarily performed by Maintenance of Way employees." (emphasis added)

The question at bar is whether the work performed was of a general nature or, rather, performed as an emergency. Petitioner concedes that if the questioned work had been in the category of an emergency then "such work performance could reasonably be said to be 'incidental' to their -(Signal employees) - assigned duties in maintaining or inspecting their pole line of wires."

The Carrier, in its opening statement of its submission, stated:

"Periodically Carrier's Signal Department inspects line wires to insure that signal circuits are operating properly. Such tests are required by the Signal Inspection Act of 1937."

It is obvious that such tests are necessary to assure a safe operation and are not discretionary on the part of Carriers. In the performance of such tests, on the dates in question, the record shows that, over the territory in question, the

signal control circuits failed to meet the minimum test requirements and "that failure of the test indicates that signal circuits carried on the line are partially shorted to ground or other circuits which could result in interference with the signal system." The work performed by the Signalmen was to correct the situation so that the minimum test could be met.

We are persuaded, based upon a careful review of the record before us, that the work performed in this particular case was not of the category of "general cutting of brush or mowing of right of way" but was, in fact, of an emergency nature requiring prompt corrective measures. The general cutting of brush and mowing of the right of way was, in fact, performed by Maintenance of Way Employees, under these same wires, at a later date.

In Award 19418 of the Third Division, NRAB, it was stated, in part:

".... the method of determining to which class such work belongs is by examination of the reason for the performance of the work.

"The Board finds that the instant record lacks the probative evidence necessary to prove that the work here involved, on this property, was not performed at the behest of and for the benefit of the Telephone and Signal Departments."

The foregoing award covers a case in point. For the reasons stated herein we will deny the claim.


AWARD:


Claim denied.


PL Board No. 1210

(4)

AWARD No. 3


C. Robert Roadley, Neutral Member


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member

Baltimore, Maryland
March 11, 1974