

PUBLIC LAW BOARD NO. 4353

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)

Case No. 11
Award No. 3

STATEMENT OF CLAIM

1. Beginning on November 3, 1987, the Carrier violated the Agreement when it assigned Signalman W. Amarar and Signalman Helper S. Visconti, instead of assigning Maintenance of Way Department Engineer Work Equipment Operators R. D'Amato and J. F. Nadeau to operate Maintenance of Way Department Work Equipment backhoes #30-15 and #30-16 in the vicinities of Newington and Meriden, Connecticut, respectively (System Files NEC-BMWE-SD-2123 and NEC-BMWE-SD-2124).

2. As a consequence of the violation in Part (1) hereof, Claimants R. D'Amato and J. F. Nadeau shall each be compensated at the Engineer Work Equipment (EWE) rate of pay for all hours worked by Signalman W. Amarar and Signalman Helper S. Visconti respectively, beginning November 3, 1987 and continuing until the violation is corrected.

FINDINGS

On November 3, 1987, Carrier assigned two Signalmen in the Communication and Signal Department to operate backhoes in the vicinity of Meridan and Newington, Connecticut, in conjunction with work involving the installation of signal and switch cables. The Organization maintained that this work was contractually reserved to employees of the Maintenance of Way Department under the Work Classification Rule of their Agreement.

That Rule reads in pertinent part as follows:

B. WORK CLASSIFICATION RULE

* * *

ARTICLE I - BRIDGE AND BUILDING AND TRACK DEPARTMENTS

The description of each position title outlined in this Article is intended to cover the primary duties of that position and, in addition, it is understood that each title comprehends other work generally recognized as work of that particular classification.

* * *

21. Engineer Work Equipment - Operates and makes minor repairs to cranes, on or off rail, movable or fixed and other heavy equipment assigned to the M. of W. Department agreed upon as requiring the assignment of an Engineer Work Equipment.

A claim was consequently filed for all hours worked on the job on behalf of R. D'Amato and J. F. Nadeau, who hold seniority as Trackmen/

Engineer Work Equipment Operators (EWEs) in the Maintenance of Way Department. Several arguments were advanced by Carrier for denying the claims. Primary among them was the contention that the Organization was unable to show that digging in general or the operation of backhoes in particular belonged exclusively to BMWE-represented EWEs by practice or rule.

While the Organization cited several examples of occasions when EWEs operated backhoes in conjunction with Signal Department work (as well as the payment of one claim for such work), Carrier ultimately was more persuasive in showing that digging work done with a backhoe had, over the years, been performed by C&S personnel and others. It did so via the introduction of written statements by officers throughout the system writing about operations before and after Amtrak assumed ownership.

Although it goes without saying that Maintenance of Way Employees are not bound by the terms of the Signalmens Agreement, that Agreement does provide insight into the practice of allocating work on the property. The Scope Rule of that Agreement reads in pertinent part as follows:

UNDERSTANDING: The line of demarcation of the signal forces in relation to associate departments is the point the following work terminates - namely: the signal men shall handle all signal work, up to and connections with the secondary leads of Service Transformers, all equipment for train stop, train control and cab signals up to and attached to the rails, all signal system wiring up to and including connections

of terminals of aerial wires, serial cables, underground conduit system cables and submarine cables; also the placing of all signal parkway or signal trenchlay cable but not the excavating that would involve the tracks, ties or ballast. All other digging in connection with signal installation will be done by signal forces. All concrete foundations for signal and interlocking apparatus to be done by the signalmen except foundations for signal bridges (emphasis supplied).

According to Carrier, the work at issue here was the relocating and burying of signal cable for new switch locations. In its initial claim, the Organization maintained that the work consisted of digging on the right of way adjacent to and under the tracks. In his response to Claimants on January 27 and February 1, 1988, Division Engineer B. R. Pohlot wrote that the incumbents in the positions "did not dig under (across) the track structure as you allege in your claim." Director-Labor Relations L. C. Hriczak reiterated this contention in a letter to General Chairman J. J. Davidson on August 26, 1988. ("Their digging did not disturb the integrity of the track structure.") Given the fact that the Signalmen's Scope Rule limits their excavation to work that does not include "excavating that would involve the tracks, ties or ballast," the question of what type of digging was performed here becomes critical.

The record, however, is devoid of any evidence to settle the basic factual dispute as to whether the work on and after November 3, 1987

in Newington and Meriden, Connecticut, was limited to digging adjacent to the track or whether it also included digging under the track structure. As a consequence, this Board is unable to issue an Award dispositive of the matter. Thus, the claim must be dismissed.

AWARD

Claim dismissed.

C. H. Gold
C. H. Gold, Neutral Chairman

J. J. Davison
J. J. Davison, Employee Member

C. E. Woodcock
C. E. Woodcock, Carrier Member

7/9/91
Date of Adoption

