

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31557
Docket No. MW-32198
96-3-94-3-625

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned three (3) Signal Department employes to perform B&B Subdepartment work (installing a 2' x 20' culvert) adjacent to the track at Mile Post 115.4 of the Chattanooga Subdivision on September 23 1993 [System File 9(32) (93)/12 (94-0010) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, B&B employes J.H. Roberts, C.V. Arnold, L.L. Woodlee and K.W. Steel shall each be allowed eight (8) hours' pay at their respective straight time rates."

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 waived right of appearance at hearing thereon.

As Third Party in Interest, the Brotherhood Railroad Signalmen was advised of the pendency of this dispute, but did not file a Submission with the Board.

This dispute arose because three Signal Department employees installed a culvert near Mile Post 115 on the Carrier's Chattanooga Subdivision. The culvert was located on property owned by the State of Alabama and was constructed as a part of a signal project shared with the State of Alabama.

Without belaboring the point, the Carrier's basic argument is that the work at issue was not governed or controlled by the Carrier because it was performed on State property. Therefore, the Carrier was not in control of the project.

Certainly, it is well established that when work performed is not within the Carrier's direction or control, the various Scope Rules normally do not apply. However, that is not the case here as shown by the fact that Carrier's employees (Signalmen) were assigned the work by the Carrier. The only issue, then, is whether the work belonged to employees represented by the Brotherhood of Maintenance of Way Employees. We find that it clearly was within its craft, as argued by the Organization.

With respect to the question of compensation, we find that the Claimants were not adversely affected by the Carrier's action. Accordingly, we follow those Awards which have held that compensation is not warranted under circumstances similar to the facts in this case.

AWARD

Claim sustained in accordance with the Findings.

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 July 1996.

Parties to said dispute were given due notice of hearing thereon.

In this case we have a penalty claim which was presented on behalf of a Signal Maintainer who was regularly assigned to a position which worked from 7:30 A.M. until 4:00 P.M. with a 30 minute meal period. The scheduled workweek of Claimant's position was Monday through Friday. The situation which formed the basis of this claim occurred between the hours of 12:00 Noon and 2:00 P.M. on Friday, November 19, 1993, when a Trainmaster, a non-agreement management employee, placed shunt wires on rails to alter signal aspects while conducting efficiency tests of train crews who were operating in the territory. There is no disagreement between the parties relative to this basic fact situation.

The respective parties and positions in this case are the same as are found in Third Division Award 31816 issued by this Board on December 26, 1996. The Board's examination of the issues involved were fully examined and set forth in Award 31816 and need not be repeated here. Rather, the conclusions reached in Award 31816 are, by reference, incorporated in this Award. The Board again concludes that in circumstances such as existed in this case the placement of shunt wires for the purpose of conducting efficiency tests is work which accrues to Signalmen.

However, as to the monetary remedy here sought, there is no evidence that Claimant suffered any actual loss of work opportunity inasmuch as he was on duty and under pay at the time the disputed work was performed. Therefore, the three hour penalty claim as presented is rejected. Carrier should be aware, however, that Scope Rules are negotiated instruments which are meant to be complied with and that repeated, flagrant violations of such Rules could well result in the assessment of compensatory damages to enforce compliance with the Rules.

AWARD

Claim sustained in accordance with the Findings.

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97-3-95-3-48

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 19th day of March 1997.