Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32460
Docket No. SG-32953
98-3-96-3-321

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Wheeling & Lake Erie Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling & Lake Erie Railway Co. (WLE):

Claim on behalf of S. F. Smith for payment of 40 hours at the Foreman's straight time rate and 12 hours at the Foreman's overtime rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used a management employee to perform covered work on the signal system at Mogadore, Ohio, during the week ending May 12, 1995, and deprived the Claimant of the opportunity to perform the work. General Chairman's File No. 231/950701. BRS File Case No. 9775-WLE."

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 claim of the Organization is that the Carrier violated the Scope of the Agreement when it permitted a Signal Supervisor to perform signal work. The Organization alleges that the Supervisor performed Agreement protected work. The Carrier's only terse response on property consisted of denying the claim and stating that the Supervisor "was assisting... in trouble shooting and debugging the crossing system prior to cut over."

As preliminary point, the Carrier may not introduce new argument and issues which it did not raise on property. This is a firmly established position of the National Railroad Adjustment Board, codified by Circular No. 1 and consistent with Awards too numerous and well known to necessitate inclusion herein. Virtually nothing in the Carrier's Submission was handled on the property and it is therefore inadmissible at this time. For example, in its Submission the Carrier for the first time suggests that the Claimant was unqualified and an improper Claimant. It states that the Scope Rule was general and did not cover the work disputed. For the first time the Carrier argues that the Supervisor instructed and trained the employees on debugging crossing protection systems, rather than performing the work for the entire time requested in the claim. For the first time in this dispute, the Carrier argues that the Supervisor was supervising for all but six hours when he did work protected by Agreement, only because no employee was qualified. The Board underlines that the Carrier's many new positions are inadmissable.

What the Board finds as proper evidence is what the parties presented while the dispute was on the property. In this case, the Organization alleged that the Supervisor was wiring "highway grade crossing gates, jct boxes, highway grade crossing instrument houses, and highway grade crossing cantilever signals" and not trouble shooting and debugging. In this regard, the Organization submitted a handwritten letter signed by three employees attesting to that fact. The Organization further asserted that the Supervisor performed the work for the entire week ending May 12, 1995 and for 12 hours of overtime. The Carrier offered no rebuttal.

Accordingly, the Board finds that the work performed was Scope protected by the language of the Agreement. The probative evidence supports the claim which must be sustained.

AWARD

Claim sustained.

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 21st day of January 1998.