

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30598
Docket No. SG-31069
94-3-93-3-22

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Consolidated Rail Corporation (CONRAIL):

'Case No. 1

Claim on behalf of D.W. Stoner for payment of 31 hours at the time and one-half rate and 104 at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed or permitted employees of another railroad between November 11 and November 27, 1991, to perform the covered work of sectionalizing and grounding power lines and denied the Claimant the opportunity to perform this work.'

'Case No. 2

Claim on behalf of H.T. Miller, III, R.T. Kepfer, D.L. Sheldon, T.M. Campbell and J.W. Kelly, Jr., for payment of 30 hours each at their respective time and one-half rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed or permitted employees of another railroad on September 7 and 8, 1991 to perform the covered work of moving power lines and denied the Claimants the opportunity to perform this work.'"

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.

These cases have been combined as one dispute because the facts are similar.

Claimants all held signal positions on the Carrier's Harrisburg Division. Conrail lines on the Harrisburg Division are also used by the National Passenger Railroad Corporation (Amtrak). Amtrak has responsibility for repair and maintenance of some Conrail lines over which it operates.

On September 7 and 8, 1991, Amtrak employees were engaged in a project to move two sets of catenary poles and a 138,000 volt power line on the Landover Line, over which Amtrak had responsibility for repair and maintenance. In the process of moving the lines, Amtrak employees elected to move the 6,600-volt line.

From November 11 through November 27, 1991, Amtrak employees performed work on Conrail's Enola Branch to de-energize the 6,600-volt power lines. Conrail officials had no knowledge of the work performed by Amtrak employees.

There is no dispute that the work allegedly performed by Amtrak was work covered by the Agreement between the Carrier and the Organization.

The Carrier has maintained that the work performed by the Amtrak employees was done without its knowledge, its consent and at no cost to Conrail. In fact, a portion of the work consisted of grounding Conrail's 6,600-volt power lines to prevent injury to Amtrak employees while they worked on their lines. They did not maintain, repair, or relocate the lines.

This Board has consistently held that the burden of proof is upon the Organization to show that work performed by third parties was with the consent and approval of the Carrier. The record is void of any evidence that the Carrier authorized the work to be done by Amtrak.

This Board has also held that, even if the work done belongs to the craft, the Carrier cannot be held liable for what occurs, if it has not authorized the work to be done. In Third Division Award 29201, the Board held:

"Based on the facts as presented, it is clear that Claimant's rights were violated. At the same time, however, the Board cannot conclude that Carrier should be held liable for what occurred. There is no evidence that the work was performed with the authority instruction, or knowledge of a Carrier official or agent or at Carrier's direction. Given this set of circumstances, a claim that Carrier violated the Agreement by its actions cannot be sustained."

We concur in the long line of cases that actions of **third** parties which is not authorized cannot serve as a basis to sustain the claims.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.