

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39855
Docket No. SG-38658
09-3-NRAB-00003-050050
(05-3-50)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Kansas City Southern Railway

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (KCS):

Claim on behalf of D. A. Luman and J. Rosine for eight hours each at their respective straight time rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope), when it used a contractor to install an AC power cable between the meter pole and the signal bungalow at Summit Ave. in Lewisville, Texas, at MP-D90.5 on the seventh subdivision and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. K0604-5800. General Chairman’s File No. 04-002-KCS-185. BRS File Case No. 13057-KCS.”

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.

At the time that this dispute arose, Signal Foreman D. A. Luman and Signalman J. Rosine were assigned to Signal Gang 890 Headquarters – Entire Line. This dispute developed when the Carrier utilized forces not covered by the Signalmen’s Agreement to install cable from the meter pole to the flasher bungalow at Summit Avenue in Lewisville, Texas, at MP-D90.5 on the seventh subdivision, for installation of a highway crossing protection device on the Carrier’s property.

On October 23, 2003, the Claimants were part of a five-man Signal Gang working in the vicinity of Lewisville. As part of the work being performed by the Claimants at the location in question, it was necessary to run a new electrical power cable from the meter head located on a nearby power pole to the breaker box in the signal bungalow. The Carrier utilized a contractor (Shufflebeam Electric Company) to install the power cable between the meter head and the breaker box in the signal bungalow to comply with a city ordinance that required such work to be performed by a person holding a Master Electrician’s license. Neither the Claimant nor any other member of the gang held such a license.

The Organization contends that the Agreement was violated when the Carrier utilized a contractor to install the power cable. According to the Organization, this use of a contractor violated the Scope Rule of the parties’ Agreement. The Organization claims that it was improper for the Carrier to contract out the above-mentioned work, which is work that is properly reserved to BRS-represented employees. The Organization contends that the work in question is not covered by the National Electrical Code and, therefore, the Carrier had no obligation to utilize an outside Electrician.

According to the Organization, the Carrier had customarily assigned work of this nature to members of the Organization. The Organization further claims that this work is consistent with the Scope Rule. According to the Organization, the Claimants were fully qualified and capable of performing the designated work. The work done by Shufflebeam Electric Company is within the jurisdiction of the Organization and, therefore, the Claimants should have performed said work. The Organization argues that because the Claimants were denied the opportunity to perform the relevant work, they should be compensated for the lost work opportunity.

The Organization points out that the National Electrical Code specifically exempts railroads, which would allow the Claimants to perform said work. Specifically, Section 90.2 of the National Electrical Code indicates the following:

“90.2 Scope

* * *

(B) Not Covered. This Code does not cover the following:

* * *

(3) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communications purposes.”

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that pursuant to the Lewisville statute, the work contracted out was required to be performed by a licensed Master Electrician; neither Claimant was so licensed. Because no member of the Gang was a Master Electrician, it was necessary for the Carrier to hire the contractor.

After a review of all facts and circumstances in this case, the Board finds in favor of the Organization. Because the transmission of power for railways is specifically exempted from the National Electrical Code, the Board finds that the work should have been performed by the Claimants. Therefore, they shall each be allowed eight hours at their respective straight time rates of pay for the lost work opportunity.

AWARD

Claim sustained.

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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 31st day of July 2009.