

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 39856  
Docket No. SG-38659  
09-3-NRAB-00003-050051  
(05-3-51)**

**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 20 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 signal conduit beneath the road at Summit Avenue 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. K604-5798. General Chairman’s File No. 04-003-KCS-185. BRS File Case No. 13059-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. According to the Organization, this dispute developed when the Carrier allegedly utilized forces not covered by the Signalmen’s Agreement to install signal conduit beneath the road at Summit Avenue in Lewisville, Texas, at MP-D90.5 on the seventh subdivision.

On October 27 and 28, 2003, the Claimants were assigned to a five-man Signal Gang working in the vicinity of Lewisville. Claimant Luman was observing vacation on both dates; Claimant Rosine was working his regular assignment. It is uncontested that on March 3, 2003, members of Signal Gang 892 completed the road boring project at MP-D90.5, which included boring under Summit Avenue, installing conduit and pulling signal wires and cables through the conduit.

On or about October 27, 2003, a contractor working for the City of Lewisville was performing non-railroad related work on Summit Avenue and accidentally severed the pipe/conduit that had been installed by Signal Gang 892 on March 3. The City of Lewisville was advised that it was liable for repairing the damages and restoring the damaged pipe/conduit to its original condition, at no cost or expense to the Carrier. The City, utilizing its contractor, performed the necessary repairs at its own expense. Claimant Rosine was assigned to work with the contractor providing flagging and pulling cable.

The Organization contends that the Agreement was violated when a contractor was utilized to repair the conduit. 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 allow the work to be performed by the contractor, because it is work that is properly reserved to BRS-represented employees.

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 performed by the contractor 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.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the conduit was damaged and repaired by the City of Lewisville at its expense. The Carrier was not involved in the matter and it should not be responsible for the repair. The City was responsible for the error and the City, not the Carrier, was responsible for correcting said error.

After a review of all facts and circumstances in this case, the Board finds in favor of the Carrier. The Carrier was not responsible for the damage to the conduit and, therefore, the Carrier was not responsible for its repair. As the Board explained in Third Division Award 36606:

“The Board has therefore held that . . . the Carrier is generally not held liable for the contracting out where the work is totally unrelated to railroad operations, or where the work is undertaken at the sole expense of the other party and is for the ultimate benefit of others, or where the Carrier has no control over the work for the reasons unrelated to having contracted out the work. . . .”

See Also Third Division Award 35634.

Therefore, because the work was performed by the City for its own benefit, it was not a violation of the parties' Agreement. The claim is denied.

**Form 1  
Page 4**

**Award No. 39856  
Docket No. SG-38659  
09-3-NRAB-00003-050051  
(05-3-51)**

**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 31st day of July 2009.**