Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33016
Docket No. SG-33800
99-3-97-3-170

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Alton and Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern Railway Company (A&S):

A. Claim on behalf of B.W. Reynolds and J.L. Pratt for payment of eight hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used an outside contractor to perform maintenance work on the electrical system in East St. Louis, Illinois, on May 6 and 7, 1996, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 960387. General Chairman's File No. 96-20-A-S. BRS File Case No. 10259-A&S."

"B. Claim on behalf of B.W. Reynolds, J.L. Pratt, R.L. Pratt and G.M. Maxwell for payment of 100 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used an outside contractor to install and maintain electrical system equipment in East St. Louis, Illinois, from November 30 to December 27, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 960148. General Chairman's File No. 95-99-A-S. BRS File Case No 10260- A&S."

"C. Claim on behalf of B.W. Reynolds, J.L. Pratt, R.L. Pratt, and G.M. Maxwell for payment of 96 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used an outside contractor to install power line poles, 480 volt power lines and lighting fixtures at East St. Louis, Illinois,

between November 6 and November 23, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 960059. General Chairman's File No. 95-87-A-S. BRS File Case No. 10261- A&S."

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.

These disputes arose from three separate occasions in the Fall of 1995 and Spring of 1996 when Carrier contracted with the Lowry Electric Company for various installations and repairs at the Carrier's yard in East St. Louis, Illinois. The Organization contends that in each instance the work performed by Lowry in the past had been assigned to Signalmen; that on previous occasions when the Carrier needed special equipment such as a bucket truck, it rented the unit; and that accordingly the subcontracting of these three projects constituted a violation of the Scope Rule of the Agreement.

The Carrier maintains that as a procedural matter, except to the extent that each involves work alleged to belong exclusively to BRS represented employees, these claims are unrelated, as evidenced by the fact that they were handled individually on the property. The cases present dissimilar fact patterns to which the Carrier has in each instance a distinct defense. Accordingly, because it is clear from past Awards that the Organization may not unilaterally combine unrelated disputes in a single claim, the Carrier argues that this inappropriate combination of claims must be dismissed.

With respect to the merits, the Carrier contends that the Organization has not borne its burden in establishing that the work in dispute fell within the parties' Scope

Rule. Nor has it in any way refuted the Carrier's evidence that similar work had been contracted out for at least 20 years prior to the incidents challenged here, in some cases to the very same contractor. Lastly, as to the first of these claims, the Carrier contends the work accomplished by Lowry constituted emergency repairs requiring immediate action on its part.

The record here demonstrates that Claim A was an emergency repair to a floodlighting system undertaken on May 6 and 7, 1996. The Carrier asserts that bucket trucks large enough to relamp the floodlight towers are not readily available on demand, but that a two to three month advance reservation is required to rent them. It argues that one Foreman and one Signalman were assigned to work with Lowry's Linemen in making these repairs, and there has been no showing of pay loss or lost work opportunity.

Claim B was directed at Lowry's replacement of pole lines commencing on November 30, 1995 and continuing throughout much of December. The Carrier asserts that live 4160 volt and 480 volt lines were worked on simultaneously. It maintains that Lowry had the necessary equipment to drill holes, set and work the 65 foot poles and provide the necessary insulating equipment to protect its workers in the process. It argues that regular Carrier forces lacked the knowledge or experience required for this work; that the Carrier lacked the equipment necessary for drilling and insulating high voltage lines; and that its 40 foot bucket truck did not have sufficient reach to accomplish the work that needed to be done.

With respect to Claim C, the record establishes that Lowry replaced and installed power line poles, re-routed and placed 480 volt power lines and installed lighting fixtures on poles shortly prior to the activity complained of in Claim B. The Carrier contends that despite the fact that it offered tuition assistance to its signal department personnel for Lineman training, no employee has received training on pole line work or possesses the necessary knowledge to do the work of drilling holes and insulating high voltage lines.

The Board carefully reviewed the numerous Awards submitted by both parties addressing both the procedural aspects of this docket and the claim of allegedly diverting covered work to an outside company. With regard to the former, there is precedent for the principle that the ex parte consolidation of identical claims for case-handling efficiency may not be a fatal procedural defect in every instance. It seems clear beyond

any possible doubt, however, that the Board is not faced here with the consolidation of identical claims. Rather, in this instance three cases, all handled as separate claims on the property, and one of which involves no common questions, have been combined unilaterally for presentation to the Board over the objection of the Carrier.

Claim A involves work dissimilar to the incidents grieved in Claims B and C, and was performed some six months prior to those incidents. The Carrier's defense to Claim A bears no resemblance to that asserted for Claims B and C. Accordingly, in the absence of the Carrier's concurrence to the consolidation, we conclude that the Organization improperly combined this claim with substantially unrelated matters in contravention of Section 3 First (i) of the Act, and will dismiss Claim A.

The Board finds Claims B and C to be of a kind. Both involve similar, sequential operations on the Carrier's property in November and December 1995 performed by the same outside concern. The claims raise similar or identical issues and elicit substantially identical defenses from the Carrier, i.e., no showing of exclusivity, lack of qualifications, and the need for specialized equipment. Although two additional Claimants appear on Claim B, the two Claimants on Claim A also appear on Claim B. Under those circumstances, the Board concludes it is appropriate to consider the merits of both matters.

The fully established standard for determining issues involving reservation of work involves analysis of contract language in the first instance and, if ambiguity is found, examination of any longstanding past practice that might shed light on the intentions of the parties.

The Scope Rule at issue reads in pertinent part as follows:

"SCOPE

This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department engaged in the construction, installation, repair, dismantling, inspection, testing and maintenance, either in the signal shop or in the field of the following:

(a) All signals and signaling systems; traffic control systems, . . . electrical and communications equipment systems, . . . overhead and

underground lines and cables, poles and other appurtenances and equipment . . . used in connection with the systems and devices covered by this agreement."

Applying this Rule to the work performed by Lowry on the high voltage overhead lines and poles that is common to Claims B and C, it is clear that the Rule expressly includes construction and repair of such equipment, but it is equally clear that lines and poles are included only to the extent they are "used in connection with the systems and devices covered" by the Agreement. The record reveals that Lowry's installation of poles and high voltage lines did not involve the "construction, installation [or] repair" of lines "used in connection with the systems and devices covered by this Agreement." Accordingly, the Board finds that on its face the Scope Rule explicitly excludes that specific work.

With respect to the installation of lighting fixtures addressed by Claim C, the Organization bears the burden of showing that such work is the exclusive province of Signalmen. In the face of the Carrier's strong showing in this regard, the Board finds it has not carried that burden.

For the foregoing reasons, Claim A is dismissed. Claims B and C are denied.

AWARD

Claims dismissed and 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 25th day of January 1999.

LABOR MEMBERS DISSENT TO
Docket No. SG - 33800
Third Division Award 33016
Referee: J.E. Conway

The facts of record indicate that the Carrier had an outside contractor perform various installation and maintenance functions on power pole lines used for light fixtures in East St. Louis.

It must be pointed out that the Carrier stated that "Foreman Reynolds was assigned to see that all the lights that could not be reached with the Alton and Southern bucket truck were properly repaired by the contractor..." It is obvious that the only question before the Board should have been the availability of a bucket truck that could reach the taller poles. The Organization on the property argued that such a bucket truck had been rented in the past.

The Carrier argued that this type of work had been contracted in the past and during the final stages of the claims handling presented a plethora of billing receipts to bolster its argument. The Organization, on the other-hand noted that a majority of these documents were merely price quotes and did not indicate if any of the projects were ever performed by a contractor.

The record in this case establishes conclusively that the work of construction, installation, repair, inspection, testing and maintenance of electrical and communications equipment and systems is covered by the Agreement's Scope rule. The record shows, without dispute, that replacement of light bulbs and fuses and the installation of power pole lines, rerouting and placing of 480 volt power lines and installation of light fixtures on poles is part of the construction, installation, repair and maintenance covered in the Scope Rule.

Based on the foregoing, the Award and Findings cannot be relied upon in future disputes.

Respectfully Submitted,

C.A. McGraw

C.A. McGraw, Labor Member