

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34218
Docket No. SG-34972
00-3-98-3-725**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link (MRL):

Claim on behalf of M. J. Erhart, J. C. Chavez, and J. Shovar for payment at their respective rates for 72 hours at the straight-time rate and 16 hours at the overtime rate on account that the Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized outside forces for the installation of signal equipment at East Toole from November 3, 1997, through November 17, 1997. (General Chairman’s File No. MRL-1-98. BRS File Case No. 10784-MRL.)”

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.

On December 22, 1997, the Organization filed a claim on behalf of the Claimants claiming that on November 3, 1997, the Carrier hired Railroad Signal Services, an outside

contracting service, to assist Signal Gang 1961 in the installation of the signal control point at East Toole, Montana, when, in fact, the Carrier should have utilized additional temporary Organization laborers or planned on grouping Signal Gangs 1961 and 1962. The Organization contends that the work performed by Railroad Signal Services, which occurred for the period November 3, 1997, through November 17, 1997, and included the installation of underground cables, signals and their foundations, instrument housings, track wires, and other related work, is covered by the agreement between the parties. The Organization argues that the Carrier violated the intent of the parties' Agreement when it did not provide enough Organization personnel to complete the work in question in violation of the Scope Rule and Article VII of the Craft Specific Provisions. The Organization argues that Railroad Signal Service employees are not covered by the parties' Agreement and the Claimants were available to perform the work in question. In addition, the Organization maintains that the Carrier failed to use reasonable efforts to use the Claimants to perform the work. Hence, the Organization seeks 72 hours of straight-time pay at the monthly special B rate as well as 16 hours of time and one-half at the monthly special B rate for Claimant Erhart; 72 hours of straight-time pay at the pay class B rate as well as 16 hours of time and one-half at the class B rate for Claimant Chavez; and 72 hours of straight-time pay at the pay class C rate as well as 16 hours of time and one-half at the pay class C rate for Claimant Shovar.

The Carrier denied the claim, contending that there was more signal construction work ongoing than the two signal crews, 1961 and 1962, could complete as scheduled. The Carrier argues that it had promised the State of Montana that the project in question would be completed by the fall of 1997. The Carrier also argues that the work in question involved both signal and track work and the Carrier could not have completed the work without contracting the services performed by Railroad Signal Services. The Carrier argues that the main Agreement allows the Carrier to engage contractors to perform work covered by the Agreement in emergencies or where the Carrier determines that it lacks the equipment, manpower, or expertise to perform the work in a timely manner. The Carrier contends that the Scope provision of the parties' Agreement does not provide exclusivity of any work to signal department employees and does not prohibit others from performing the work in question. The Carrier also argues that Article VII is not applicable to the instant dispute as it expressly covers the conditions under which temporary signal construction laborers may be hired whose positions are expected to become permanent after 11 months of service, which is not the situation or circumstance presented in the claim at hand. The Carrier also argues that the Claimants are not entitled to the compensation sought by the Organization as they were working on Signal Crew 1962 at Billings at the time of the claim.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Agreement between the parties expressly allows the Carrier to contract out work that is covered by the Agreement. The Carrier is supposed to use reasonable efforts to use its own employees for the work covered by the Agreement, but the Carrier can, if it lacks the equipment, manpower, or expertise to perform certain work, use a subcontractor to complete the work.

The record reveals that the Claimants were fully engaged in other pressing signal work. The Carrier needed this additional work performed at the same time. Under the Agreement, the Carrier is allowed to use its discretion in a reasonable fashion to hire a contractor to perform the work to assist its own forces. The record reveals that the Carrier originally had planned to have its own employees complete this work; but since its own crews fell behind schedule on other projects, the Carrier was required to use a subcontractor to complete the work at issue.

A thorough review of this record makes it clear that the Carrier did not violate the Agreement when it did the subcontracting complained about in this case. Therefore, the claim must be denied.

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 23rd day of August, 2000.