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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36750
Docket No. SG-36625
03-3-01-3-137

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

PARTIES TO DISPUTE: (*Brotherhood of Railroad Signalmen*
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of D. P. Sweitzer, D. H. London, R. R. Racine, J. J. Rompala, D. M. Ivkovich, D. P. Cisowski, J. D. Haney, R. B. Baker, Jr., and T. D. Girga for payment of 80 hours each at the straight time rate. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, and CSXT Labor Agreements No. 15-18-94 and 15-46-97, when in May 1999 Carrier allowed outside contractors to install four radio controlled electric power switches on the Baltimore subdivision. This action deprived the Claimants of their rightful opportunity to perform this work. Carrier File No. 15 (99-0210). BRS File Case No. 11604-B&O.”

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.

The Organization filed the instant claim on behalf of nine Claimants after the Carrier used an outside contractor to install four radio-controlled electric power switches on the Three River Division of the Mon Subdivision. The claim seeks 80 hours' pay, at the straight-time rate, for each Claimant as compensation for the loss of this work opportunity. The Carrier denied the claim, contending that because the installation work was on "non-signaled" territory, it could not be considered signal work.

The Organization contends that the Carrier violated the Scope Rule when it allowed an outside contractor to perform the work at issue. The Organization argues that the disputed work clearly is covered by the Agreement, was on the Claimants' assigned territory, and should have been performed by the Claimants. The Organization asserts that the Carrier should be required to pay the Claimants in accordance with the remedy requested for this lost work opportunity.

The Organization points out that there is no dispute regarding the underlying facts. The switches were installed in an area that is not signalized, and the Carrier allowed the contractor's employees to perform the installation work at four different locations on the Claimants' territory. The Organization contends that the disputed work is reserved to Signal employees covered by the Agreement, and the central issue is whether the disputed work accrued to signal employees to the exclusion of outside contractors.

As stated above, the Carrier contended that because the work was performed on non-signalized territory it could not be considered signal work its assignment of the work to non-covered employees did not violate the Agreement. The Organization maintains that throughout the industry, radio-controlled, electric-powered switches are considered signal equipment. Accordingly, the instant work is covered by the Scope Rule, whether the switches were installed on signaled or non-signalized territory. There is no dispute that the switches are equipped with a

presence detector that is activated by a track circuit via track wires attached to the rails from the control unit.

The Organization emphasizes that Signal employees on the Three River Division installed and maintain all other signal apparatus on this territory, and the Carrier did not refute this. Moreover, the Carrier assigned covered employees to maintain the four switches at issue in this dispute after their installation was complete. It is evident that the Carrier recognized this work as accruing to Signalmen when it assigned these maintenance duties to Signalmen.

The Organization argues that it is well established that when employees are deprived of the opportunity to perform work reserved to them under the Agreement, they are entitled to recover the wages that they would have earned for performing the work. The Claimants had a contractual right to perform the installation work at issue, and were improperly denied a valuable work opportunity. The Organization ultimately contends that the claim should be sustained in its entirety.

The Carrier argues that the Scope Rule does not cover the installation of radio-controlled switch machines that are not part of the wayside equipment necessary for cab signal, train stop, train control, and traffic control systems. The Carrier maintains that neither the switches at issue nor their operating mechanisms are tied to, or have any integral connection to, any signal system controlling train or traffic movement. The Carrier acknowledges that these switches may be utilized to allow train movement, but the Carrier emphasizes that they do not control train traffic as part of the signal system, nor do they control automotive traffic.

The Carrier maintains that the Organization failed to provide any evidence that it violated the Scope Rule, or that the work at issue belongs exclusively and system-wide to Signalmen. Moreover, there is no support for the Organization's assertion that a switch machine is considered to be signal equipment within the railroad industry. The Carrier emphasizes that the installation of a switch machine is reserved to signal employees only when it is integrated into the signal system; there was no such integration in this case. The Carrier argues that, instead, it is unrefuted that the switches at issue were not part of the signal system, and that there is no signal system on this particular territory. The Organization's argument

that signal employees maintain all other signal apparatus on non-signaled territory, such as grade crossings, ignores the undisputed fact that a grade crossing mechanism is part of a traffic control system.

The Carrier asserts that nothing in the record requires the Carrier to use signal employees to perform the disputed work to the exclusion of contractors. At no time during the handling of this claim did the Organization argue that its members ever installed such equipment in the past. The Carrier points out that the Board has repeatedly held that absent clear language in the Agreement or evidence of a system-wide practice, there is no reservation of work and it may be contracted to outside parties. The Carrier emphasizes that this is particularly true when the technology is relatively new, as is the case here. The Carrier contends that under these circumstances, it does not even matter if signal employees maintained the equipment after installation. To be successful here, the Organization must prove that the work comes within the scope of generally recognized signal work or that signal employees have installed such equipment in the past. The Carrier maintains that the Organization has done neither in this proceeding.

The Carrier asserts that the Claimants have no right to the disputed work because the switches were not part of any signal system, and the installation of these switches is not covered by the Scope Rule. The Carrier argues that sustaining the claim would result in an undeserved and unjustified windfall for the Claimants, who were fully employed and unavailable to perform the disputed work. The Carrier contends that the instant claim should be denied in its entirety.

The Board reviewed the record in this case, and finds that the Carrier violated the parties' Scope Rule when it engaged an outside contractor to install four radio-controlled electric power switches. The Scope Rule states, in part, that the Agreement between the parties governs installation of signals and "all other apparatus considered as part of the signal system. . . ." It also reserves to BRS-represented employees "all other work generally recognized as signal work." The Rule further states that "no employees other than those classified herein will be required or permitted, except in emergency, to perform any of the signal work described herein. . . ."

In CSXT Labor Agreement No. 15-18-94, the parties agreed that construction work was "work which involves the installation of new equipment and systems and the major revision of existing systems, and not work which involves maintaining existing equipment or systems."

The Claimants in this case were employees who were assigned to various signal positions on the Carrier's construction team. The Board finds that the Carrier wrongfully utilized an outside contractor instead of the Claimants to perform the work on their Division that is reserved to them under the Signalmen's Agreement. The four radio-controlled electric power switches should have been installed by the Claimants.

The Board rejects the Carrier's assertion that because the installation was allegedly on "non-signaled" territory, it cannot be considered to be signal work. The Carrier admits that the switches can be utilized to allow train movement. The record reveals that Signal employees maintain other signal apparatus on non-signaled territory.

Neither on-property Third Division Award 19350, nor Award 36241 involving a dispute on the former Burlington Northern Railroad, which were cited by the Carrier is convincing. This was not a case where the work was assigned to another Organization's employees; this was a subcontracting case where an outside contractor was brought in to perform what is clearly this Organization's work.

Once the Board has determined that an Agreement violation has occurred, we then must look at the remedy requested. In this case, the Organization is seeking 80 hours on behalf of each nine Claimants. The Board finds that there is no basis for awarding each Claimant 80 hours. The record demonstrates that the work took a total of 80 hours, and we hold that those 80 hours should be divided equally among the nine Claimants.

AWARD

Claim sustained in accordance with the Findings.

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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 22nd day of October 2003.