

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36951  
Docket No. SG-36777  
04-3-01-3-327**

**The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Paducah & Louisville Railway, Inc.**

**STATEMENT OF CLAIM:**

***“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Paducah & Louisville Railway (P&L):***

**Claim on behalf of K.G. McGregor for payment of 136 hours at the straight time rate. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, Appendices 1, 10, and 11 when on April 14, 26, and 27, 2000 Carrier allowed contractor employees to perform work covered under the Scope of the Signalmen’s Agreement. The work in dispute was the installation of highway crossing warning devices at Ring Road in Elizabeth, Kentucky. Carrier’s actions deprived the Claimant of the opportunity to perform this work. BRS File Case No. 11567-P&L.”**

**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.

In a letter dated February 29, 2000 the Carrier notified the Organization's General Chairman of its intent to use an outside contractor. More specifically, the letter advised that it intended "to use outside contractor for the installation of Crossing Signals at the Ring Road, Elizabethtown, KY as outlined in Appendix 10 of the labor agreement" and that it anticipated that the work would start on or after March 15, 2000. The letter said nothing more. When the Organization did not reply to the notice, the Carrier went forward with the work and the contractor in question performed the work from April 14 through April 27, 2000. At all relevant times herein the Claimant was assigned to the position of Signalman and worked all hours assigned to him during the period in dispute.

The parties have agreed in Appendix 11 of their Agreement that the Carrier "shall have the right to contract out construction, clean-up, and repair work . . . necessary . . . to expedite the upgrading of the railroad and that the Carrier shall maintain a normal complement of not less than five (5) active employees covered by the Schedule Agreement." In addition, the parties agreed in Appendix 10 the Carrier could contract out work covered by the Scope Rule if one or more of the following could be demonstrated: (1) special skills not possessed by bargaining unit employees (2) special equipment necessary to perform the work was not owned nor available to the Carrier, or (3) that time was of the essence. Moreover, Appendix 10 also obligates the Carrier to provide notice of its intent to contract out and that the notification "shall clearly set forth a description of the work to be performed and the basis on which [the Carrier] has determined it is necessary to contract out such work according to the criteria set forth above."

Appendix 10 clearly requires that the Carrier provide notice of a certain kind so that the Organization can request a conference. The Third Division has held that the purpose of such a conference is to provide the Organization with an opportunity to persuade the Carrier that employees should be assigned the work in question. The Carrier argues that because the Organization did not request such a meeting there was no violation. That argument however ignores two important factors. First, Appendix 10 is clear that the Carrier "shall set forth . . . the basis on which . . . it is necessary to contract out such work . . ." according to the criteria set forth elsewhere in the Appendix. Moreover, in keeping with the purpose of such a conference, such information would clearly enable the Organization to attempt to persuade the Carrier to refrain from contracting out. In any event, the Carrier's

letter of February 29, 2000 provided nothing more than a description of the work and the anticipated date of commencement. Thus, the Carrier did not set forth the basis on which the criteria spelled out in Appendix 10 had been met and its notice was in violation of the parties' Agreement.

The question of remedy therefore remains. The Organization, as noted above, contends that the Carrier violated the parties' Agreement when it failed to give the proper Appendix 10 notice. Importantly, nowhere does it contend that the Carrier did not have the right to contract out the work in question. Moreover, the Claimant in question did in fact continue to work his regular assignment during the period in question. Thus, we can only conclude that the Carrier's technical notice violation did not in and of itself render the contracting impermissible and such a conclusion would, in our estimation, be necessary before any monetary remedy could be ordered. However, from this point forward we hereby order the Carrier to ensure that any contracting out Appendix 10 notices conform to the requirements contained therein and as described above.

### **AWARD**

**Claim sustained in accordance with the Findings.**

### **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 March 2004.**