

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37203
Docket No. SG-36392
04-3-00-3-634**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of M. J. Kennedy, G. J. Engelken, R. S. Stryker, and R. L. Barton, for payment of 160 hours each at their respective time and one-half rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when beginning on July 7, 1999, through July 28, 1999, it allowed employees of an outside Contractor (Railway Controls Limited) to install automated horn systems to use in conjunction with Automatic Highway Crossing Protection at several locations on the Kansas Sub-Division at Marysville, Kansas, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1204923. General Chairman's File No. 93sc4123. BRS File Case No. 11361-UP."

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.

This claim raises an allegation by the Organization that the Carrier violated the Scope Rule by permitting a contractor to perform the installation of an automated horn system at five separate grade crossings in Marysville, Kansas, rather than using the Claimants. What the record reflects is that the City of Marysville, in concert with the Kansas Department of Transportation, contracted for this installation work, which was performed at its expense, on its property, under its direction and for its sole benefit. The only involvement of the Carrier with this system was to provide an electrical connection from the existing crossing signal equipment to activate the horn and strobe light devices, work which was admittedly performed by BRS-represented employees under the terms of the Agreement.

The Organization argues that the disputed work is not the same as preemption of traffic signals, which is intended to govern the movement of vehicles and pedestrians on streets, but has a function associated with the movement of trains and equipment at crossings and, as such, is an appurtenance of a signal system. It does not agree that a determination as to whether work is covered by the Scope Rule rests solely on who controls the work, but also on its purpose and Carrier's responsibility to assign work to BRS-represented employees, citing Third Division Award 30108. The Organization asserts that there is a past practice of employees performing work pertaining to signal warning devices which was not denied by the Carrier and must be accepted by the Board, relying upon Third Division Awards 30460 and 26937. Because the Claimants were deprived of a work opportunity, the Organization contends that monetary relief is appropriate, citing Third Division Awards 21678, 20633 and 20311.

The Carrier argues that this is not a case of first impression, noting that the Board denied essentially identical on-property claims in Third Division Awards

37063 and 36339. The Carrier relies upon the multitude of prior Board precedent holding that there is no violation of the Scope Rule when the work contracted is not within the Carrier's control, performed at its instigation, for its benefit or under its direction, as was the case herein. See, Third Division Awards 31234, 28248, 26082, 24078, 23422, 20644, 20511, 20280, 20156, and 19957. The Carrier also notes that the Claimants were fully employed and are not entitled to damages, citing Third Division Awards 31652, 31284, 31171, and 30166.

A careful review of the record convinces the Board that, not only does the record clearly and unequivocally establish that the Carrier had no semblance of control whatsoever with respect to the disputed contracting, which was initiated by the City of Marysville, performed under its direction and control, at its expense and for its sole benefit, but that such factors are determinative of whether the work falls within the Scope of the Agreement. See, e.g. Third Division Award 31234. As noted by the Carrier, this is not a case of first impression. The Organization was informed in Third Division Awards 37063 and 36339 that this exact same work - the contracting by the City of Ames, Iowa, of the installation of an automated horn warning system - was not a violation of the Scope Rule because the Carrier did not possess the necessary control over it. It does the parties and the process no good when the Organization continues to file and pursue repetitive claims before the Board after the underlying issue has clearly been decided, as it has in this case.

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 28th day of September 2004.