

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37488
Docket No. SG-36538
05-3-01-3-41

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Paducah & Louisville Railway)

STATEMENT OF CLAIM:

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

CASE A

Claim on behalf of K. G. McGregor for payment of 135 hours at the Foreman's time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendix 1 of the Scope Rule, when on February 8, 9 and 10, 2000 Carrier permitted outside contractor employees to and install Electrocode units between Delaney and Eureka, KY and deprived Claimant of the opportunity to perform this work. Carrier's File No. 15(02-0035). BRS File Case No. 11493-P&L.

CASE B

Claim on behalf of K. G. McGregor for payment of 247 hours at the Foreman's time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendix 1 of the Scope Rule, when on February 21, 22, 23, 24, and 25, 2000 Carrier permitted outside contractor employees to and install Electrocode units between Delaney and Eureka, KY and deprived the Claimant of the opportunity to perform this work. BRS File Case No. 11493-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.

The record reflects that the gang to which the Claimant was assigned was fully prepared and scheduled to install electrocode units between Delaney and Eureka, Kentucky, when, on August 16, 1999, the Signal Foreman on the gang was injured and unable to work. Subsequently, on October 6, 1999, the Carrier informed the Organization of its intent to use an outside contractor to install the units into the signal system in question and on the dates set forth in the claim the outside contractor performed that work.

The Organization contends that the use of an outside contractor under these circumstances violates the parties' Scope Rule that provides, in relevant part, that the Agreement governs the rates of pay, hours of service and working conditions of all employees in the Signal Department involved in the installation of "all signals and signaling systems." Moreover, the Organization also relies on a Letter of Understanding between the parties that provides that a contractor will be allowed to install crossing warning devices only with respect to six enumerated locations, none of which are involved in the instant dispute, and that those locations "will be the only location (sic) that the contractor will be permitted to (sic) signal work. . . ."

In its Submission to the Board, the Carrier asserts only that the Letter of Understanding is not relevant, but it does not enlighten the Board as to why. Thus, we find, in accordance with Third Division Award 36929, on this same property and between these same parties, that when the Carrier merely reiterated the facts set forth in the claim and provided no reason at all for denying the claim other than a

mere assertion we have no choice but to conclude that the Organization carried its burden of proving the alleged violation and we so hold.

We are left then with the question of remedy. The Organization makes a claim for approximately 380 hours of pay. However, it alleges that there is only one Claimant who lost a work opportunity. Thus, we are constrained to conclude that the sole Claimant could not have lost as much time as sought in the claim. Rather, the more reasonable conclusion is that he lost eight hours for each day that the outside contractor was used as set forth in the claim. Therefore, we conclude that he is to be made whole for such time, at the rate alleged, and no more.

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 19th day of April 2005.