

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37534
Docket No. SG-38058
05-3-03-3-464

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company
(Alton & Southern Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern:

Claim on behalf of employees J. L. Pratt, G. M. Maxwell, R. L. Pratt, J. D. Annand, R. D. Kilman, Jr., A. J. Beaston, and M. J. Wasser, for 128 hours for Jeff Pratt; 160 hours for Gary Maxwell; 168 hours for Russell Pratt; 20 hours for Jim Annand; 4 hours for Ray Kilman; 64 hours for Adam Beaston and 128 hours for Mike Wasser, account Carrier violated the current Signalmen's Agreement, particularly the SCOPE, when on June 27 and 28, 2002, and July 1, 2, 3, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 29, 2002. Carrier allowed a contractor (Lowry Electric) to repair and replace light bulbs and ballast, and run new cable in all of the floodlight towers in the Alton & Southern Railway classification yard. Carrier's actions deprived the Claimants of the opportunity to perform this covered work. Carrier's File No. 1338777. General Chairman's File No. S-SR-342. BRS File Case No. 12785-A&S."

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 September 21, 2002, the Organization filed a claim on behalf of the aforementioned employees contending that they were collectively entitled to 672 hours' pay because the Carrier allowed Lowry Electric Company to repair and replace bulbs and ballast, and run new cable in all the floodlight towers in the A & S classification yard.

The Organization argued that allowing a contractor to perform this work violated the parties' Scope Rule, which governs the rates of pay, hours of service, and working conditions of employees in the Signal Department who are engaged in the construction, installation, repair, dismantling, inspection, testing and maintenance of electrical equipment used in connection with the systems and devices covered by the Agreement.

The Carrier denied the claim maintaining that the same issue subject of this claim was resolved in its favor in Third Division Award 33016.

The Organization appealed the instant claim arguing that Award 33016 was distinguishable from this dispute because here there was no emergency and, therefore, the Carrier had ample time to reserve a bucket truck large enough to perform the work on the flood light towers that was performed by Lowry Electric Company personnel.

The dispute in Award 33016 involved three separate occasions in the fall of 1995 and spring of 1996, when the Carrier contracted with the Lowry Electric Company to (1) perform maintenance work on the electrical system (2) install and maintain electrical system equipment and (3) install power line poles, 480 volt power lines, and lighting fixtures at East St. Louis, Illinois. On this property, Signal

Department employees install, repair and maintain electrical and communications equipment used in connection with the systems and devices covered by their Agreement.

In Award 33016, the Board found that the maintenance work that the contractor performed on the electrical system at East St. Louis constituted emergency repairs that required immediate action. The Board further held that the work performed by the contractor involving the installation of poles and high voltage lines did not involve the "... construction, installation [or] repair . . . of lines . . . used in connection with the systems and devices covered by this Agreement." Accordingly, the Board concluded that the parties' Scope Rule explicitly excluded this work.

As the Board observed in Award 33016, the burden rests with the Organization to demonstrate that the work in dispute is in the exclusive province of Signalmen. In the instant claim, the Organization has not sustained that burden of proof. The Organization's evidence that the Scope Rule entitled the Claimants to the work performed by Lowry Electric Company personnel at the classification yard consisted of a 1999 article in the "Gateway Gazette," an in-house publication, and a written statement from the Manager Signal and Communications.

The "Gateway Gazette" article stated that Signalmen had rewired the tower and rented a 100 ft. lift to relamp the tower. Rewiring and relamping one tower during one project is not persuasive evidence that Signalmen on this property have historically and customarily repaired and replaced bulbs and ballasts and ran new cable in floodlight towers, the work subject of this dispute.

The statement submitted by the Manager of Signal and Communications is equally unavailing. As a threshold matter, there is no evidence that the Organization introduced this statement during the handling of the claim on the property. This, of course, would have given the Carrier the opportunity to investigate the statement. In any event, the statement never expressed or implied that Signal Department employees exclusively installed and maintained pole lines and floodlighting on the property. The Carrier contends that it has contracted this work for at least 20 years, some of which was contracted to Lowry Electric Company. That representation has not been refuted.

Based on all the foregoing, the instant claim must be denied because the Organization failed to demonstrate that the parties' Scope Rule encompassed the work performed by Lowry Electric Company at the classification yard.

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 June 2005.