

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37728
Docket No. SG-36964
06-3-01-3-523

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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:

Claim on behalf of D. H. Richey, M. J. McNace, and J. G. Jensma for payment of 10 hours each at the straight time rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on June 28, 2000 Carrier utilized outside contractors to haul fill dirt and level the fill to set foundations for highway crossing signal warning devices at MP 104.25, 24th Avenue, in Blainstown, Iowa. This action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1243252. General Chairman's File No. Nscope-098. BRS File No. 11703-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.

It is undisputed that the Carrier contracted out the hauling, moving, and grading of dirt fill material to prepare a signal mound at the location specified in the Statement of Claim. Although the claim asserted that a backhoe was also used, the Carrier refuted the contention and the Organization did not provide any evidence to support its assertion. Accordingly, given this state of the record, the work in dispute is limited to the hauling and the manual spreading and grading of dirt fill.

The Organization contends that the Scope Rule was violated by the Carrier's action. In support of this contention, the Organization cited four specific portions of the Scope Rule: Items 1, 11, 12, and 13. Our review of the provisions in question reveals no explicit reference to the kind of dirt work involved here. Items 1(d) and (e) as well as 11 both refer to "systems" and "devices." Item 13 includes the "... appurtenances and apparatus of the systems and devices referred to herein." The words appurtenances and apparatus typically embrace the subordinate components of such systems and devices which generally consist of actual things that are attached to them in some manner. Finally, Item 12 refers to "... work generally recognized as signal work. ..."

Given the absence of Agreement language specifically reserving the dirt work in question, it was the Organization's burden of proof to establish scope coverage by proving that such work has customarily, traditionally, and historically been performed by signal employees. No such evidence has been provided on this record.

Quite to the contrary, the Carrier produced statements and past records to support its position that such dirt work has been performed by contractors in the past.

Finally, the Carrier cited Third Division Award 37020 in support of its position. The Award involved not only these same parties, but also the same three Claimants and the same type of work. The Award found that the Organization did not establish scope coverage by Rule or past practice in that dispute.

Given the foregoing considerations, a proper basis for sustaining the claim has not been demonstrated. Therefore, the claim must be denied.

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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 February 2006.