

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37753
Docket No. SG-38090
06-3-03-3-530

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe:

Claim on behalf of V. E. Jones, R. Blowers and G. G. Tester, for 24 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 1 “SCOPE” when on December 9, 2002, through December 11, 2002, it used an outside contractor, not covered by the Agreement, to install conduit on the Southwest Blvd. Bridge, for the purpose of housing cable used for the signal system. Carrier's File No. 35 03 0013. General Chairman's File No. 03-004-BNSF-21-K. BRS File Case No. 12740-BNSF.”

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 January 1, 2003, the Organization submitted this claim seeking 24 hours pay on behalf of each named Claimant contending that the Carrier's use of an outside contractor to install conduit used for signal cables between December 9 and December 11, 2002 violated Rule 1 - SCOPE.

On January 30, 2003, the Carrier denied the claim on grounds that the Kansas City Terminal Railway Organization (KCT) had entered into contracts with various companies to tear down and rebuild the Southwest Boulevard Bridge in Kansas City and stating that the conduit at issue was intended for multiple uses. Specifically, the Carrier contended that:

“. . . the conduit is installed for the electrical, fiber optic communications leases, and signal needs of the Kansas City Terminal Railway. The conduit is available for use for any outside business lease that the KCT Railway also deems acceptable. This conduit is not unique to Signal Department needs.”

In its April 9, 2003 denial at the second level, the Carrier put forth another defense - the bridge was owned by the city of Kansas City; neither the Carrier nor the BRS were authorized to perform work on it.

A review of the information exchanged between the Parties in the ensuing appeals and denials, however, reveals that the Carrier was apparently misinformed. In fact, the city neither owned the bridge nor in any way dictated, controlled or restricted what entities could perform work on it. Additionally, as further factual background was developed, it became clear that the old bridge had employed a steel trough holding signal cable; that it had been installed by BRS-represented personnel; and that the original cables were temporarily moved to a pole line to facilitate construction of the new bridge.

Three of the six new, concrete-encased conduits installed by the outside contractors contain signal cable. As to those three conduits, they serve no-multi-use purpose, but are used to house cable used exclusively for the KCT signal system.

The governing Rule 1 – SCOPE, provides in pertinent part:

“A. This agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the

construction, reconstruction, reconditioning, installation, reclaiming, maintenance, repair, inspection and tests, either in the signal shop, or in the field of the following:

* * *

- B. All appurtenances, devices and equipment used in connection with the systems cited in Paragraph A, regardless of where located and how operated, and devices covered by the scope of this agreement, as well as any other work generally recognized as signal work.
- C. High and low voltage signal lines, overhead and underground, including poles, cables, cross arms, wires, tie wires, insulators, guy wires, messenger cables, rings, and other fixtures and equipment used in connection therewith, conduits, and conduit systems, transformers, arresters, and distributing blocks used in connection with the systems, devices, or equipment covered by this agreement. . . . (Emphasis supplied.)

The record clearly establishes that three of the six conduits at issue were intended for signal cable use. Whether the work of laying and covering only those cables in concrete was susceptible of being efficiently segregated from the rest of the job is, however, both a watery proposition at best on this record and one not advanced by the Carrier on the property. It is thus beyond our jurisdiction to now consider.

Accordingly, the claim will be partially sustained with the Claimants being reimbursed for 12 hours each at straight time rates or one-half of the amounts claimed, for the Rule violation set forth.

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 21st day of March 2006.