

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39468
Docket No. SG-37339
08-3-NRAB-00003-020342
(02-3-342)

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 S. J. Zerbst, T. J. Norwood, C. S. Boheen, A. N. Davis and D. S. Louise, for forty hours each at their respective time and one-half rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Rules 4 and 80, when it used outside contractors to perform earth boring to install underground conduits for signal cables on the Kenosha Subdivision at Mile Posts 43.74, 42.63, 41.87, 41.26, 40.80 and 39.12, on February 1, 3, 5, and 6, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1265368. General Chairman's File No. Nsocpe-4-177. BRS File Case No. 12012-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.

The Claimants in this case were assigned to a construction crew at the time of this dispute. The claim developed when the Carrier utilized a contractor to perform directional boring to install underground pipes and conduit at six locations in Zion, Illinois. The Organization requested that each Claimant be reimbursed 40 hours at the time and one-half rate equal to the time the outside contractor's employees performed the work.

At the outset, the Organization alleged that the Carrier did not properly decline the initial claim in accordance with Rule 69 of the Agreement. It stated that the Carrier did not provide a reason for the denial. It also stated that the declination was not issued by the officer designated to respond to claims.

The Carrier noted that the claim was addressed to and answered by J. J. Stoner. The Carrier pointed out that Stoner stated that the Claimants were not qualified to perform the work and that the Carrier had customarily and traditionally utilized contractor forces to perform this type of work. The Carrier cited Third Division Awards 28800 and 27590 to support its position relative to the Organization's time limit argument.

The Board finds that the Carrier properly answered the initial claim and there was no violation of Rule 69. The Board agrees with the reasoning of Award 28800 that the Rule only requires that the Carrier respond to the claim, as opposed to only the party designated to receive the claim. The Carrier answered the claim and that is all that is required by Rule 69.

The Organization argued that this work is reserved to Signalmen by the clear language of the Scope Rule, which provides in unambiguous terms that the installation and construction of signal systems and the underground lines and conduits pertaining to such signal systems are generally recognized as signal work. The Organization cited numerous Awards that held that work to be performed for the purpose of a signal system is Signalmen's work. Finally, the Organization noted that since this claim has been filed the contractor's employees have been removed from the property and the Claimants have been trained and are now performing the work.

The Carrier stated that the work in question is not covered by the Scope Rule, nor has the Organization shown that the work associated with directional boring has been exclusively performed by Signal Department employees on a system-wide basis. The Carrier argued that there was no contracting out of BRS scope covered work. The Carrier stated that it supplied evidence to support its position that such work has historically been performed by other parties. The Carrier noted that the Organization did not refute this evidence. The Carrier cited Third Division Awards 24538, 34169, 34180 and 36747 in support of its position. The Carrier concluded that the Organization failed to prove that boring work was exclusively reserved to its craft.

After reviewing the entire record, the Board finds that the Organization failed to meet its burden to prove that directional boring is covered by the Scope Rule. It is fundamental that the Organization bears the burden to prove that the Scope Rule specifically reserves this work to BRS-represented employees. The Organization did not refute the evidence that the Carrier presented in support of its position that this type of work had been performed by contractors on this property. The Organization also failed to prove that the Claimants had the necessary skills to perform the work at the time of the claim. Consequently, whether or not they were subsequently trained to do the work and are now performing it, as alleged by the Organization, does not change the result. Therefore, the claim must be denied.

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 29th day of December 2008.

Labor Members Dissent
Third Division Award 39468
Docket No. SG – 37339
Referee: John R. Binau

The undersigned dissent to Award 39468 and conclusions of the majority are, for the record erroneous.

The Agreement between the parties specifically covers the work in dispute. The record shows that the boring of pipe and conduit was solely for the signal department's signal system and for no other reason, clearly establishing the purpose of the work performed is covered by the Scope Rule.

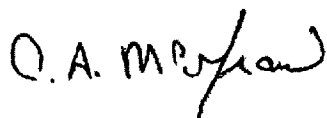
The majority was led astray by carrier's insinuation that "directional boring" is somehow different than "Earth Boring." Contrary to the carrier's contentions and the Findings in this Award, Agreement Rule 4 clearly establishes the minimum number of signal department employee's assigned earth boring work. The Agreement clearly states that any use of any type of boring machine, vertical or horizontal. "*used in the signal department work*" will be performed by signal department employees. Carrier's misguided belief that Rule 4 only applies to a large auger used to dig holes is implausible.

The fact is that the Signal Gang has performed this type of work in the past, with the same type of equipment utilized by the contractor. The Signal Gang had requested management to allow the covered employees of the Gang to perform the work in question, and was denied the work opportunity.

It is unreasonable and injudicious to conclude that the parties have agreed to establish Boring Gangs and such work is not covered under the Scope Rule.

The Award and Findings should be ignored in future cases.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C.A. McGraw". The signature is written in a cursive, flowing style.

C.A. McGraw, Labor Member