

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40421
Docket No. SG-39678
10-3-NRAB-00003-060515
(06-3-515)**

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
(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 M. R. Debose, R. Illg, R. P. Scott, and J. M. Waddle, for 15 hours each at their respective straight time rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, Rule 4 and the Letter of Agreement dated December 15, 1997, when it allowed contractors to perform boring for the installation of conduit at two road crossings on the Port Terminal of Houston territory on three days prior to August 9, 2005. Carrier’s File No. 1433936. General Chairman’s File No. S-1, 4, Dec. 15, 1997-714. BRS File Case No. 13648-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.

This matter arises from a contract with Railroad Control Limited to bore two crossings on the Port Terminal of Houston three days prior to August 9, 2005. The case involves Port Terminal Railroad's (PTR) use of contractors to perform boring on its territory. By way of context, PTR, formerly owned by the Harris County Navigation District, provides services along the Houston Shipping Channel. In this capacity, each of the railroads use the PTR to assist in moving their freight through this territory. The PTR is a fully functioning, self-sufficient railroad whose employees were unionized and represented by each craft in the railroad industry except for the Signal craft.

According to the record, signal work on the PTR has historically been accomplished by third party contractors and employees of other railroads that agreed to assist. Within this context, the Houston Belt & Terminal Railroad (HBT) was one such entity which assisted PTR with signal work. When this Carrier assumed control of the northern portion of HBT via a 1997 Implementing Agreement, the Carrier agreed to continue to assist PTR with signal work as long as PTR requested it to do so. PTR remained free to perform its own signal work and was not required to use Carrier's Signal forces.

When the Carrier received the Organization's claim, the Carrier discovered that PTR had contracted with an outside entity for the subject work. PTR confirmed that the work was being done on PTR property and not on the Carrier's property, that the work was being done for PTR's benefit and not for the benefit of the Carrier, and, further, the Carrier did not have control over the work.

Based on the record evidence, the Board finds that the work was not done on the Carrier's property, and that the work done was not under the control of the Carrier. As established in Third Division Award 37974, ". . . work performed outside of railroad property on equipment not under the control of the Carrier does not violate the Agreement."

The Board further finds that because the Scope Rule of the Agreement is general and boring work is not reserved to the Signal employees, the use of a contractor in this instance would be permissible.

As established in Third Division Award 39468, "It is fundamental that the Organization bears the burden to prove that the Scope Rule specifically reserves this work to [Organization]-represented employees." Boring work is not reserved to the class and craft of Signalmen.

The involved work is not reserved to Signalmen; and because the work was not under the control of the Carrier, the instant claim is 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 14th day of May 2010.