

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40828
Docket No. SG-39415
11-3-NRAB-00003-060376
(06-3-376)**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of C. J. Grifo, R. M. Monty, B. T. Ruddy, S. W. Senese and A. M. Siembzruch, for four hours each at their respective straight-time rates of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used contractors to do the work associated with setting a pole for use with Metra's signal system on July 30, 2004, on the Milwaukee District, and denied the Claimants the opportunity to perform this work. Carrier's File No. 11-3.3-472. General Chairman's File No. 52 CM 04. BRS File Case No. 13571-NIRC.”

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.

At the time this dispute arose, the Claimants were regularly assigned to positions on Signal Gang No. 9 headquartered at Franklin Park, Illinois. They worked on positions subject to the General Rules Agreement between the Northeast Illinois Regional Commuter Railroad Corporation (NIRC or Metra) and the Brotherhood of Railroad Signalmen, effective March 1, 1984, as amended.

In conjunction with the installation of a digital radio antenna for the new Galewood East Control point, the Carrier contracted out the work of setting a pole for use with the Metra signal system. On July 30, 2004, four contractor workers dug a hole, installed pole steps and set the pole in the ground. Several members of the signal gang were present, but did not assist with the work of setting the pole.

The Organization submitted a claim on behalf of the Claimants, asserting that the Carrier violated the Scope Rule by using non-covered employees to perform the work, and requesting that each Claimant be paid four hours at their respective straight time rates for the loss of the opportunity to perform this work.

The Carrier denied the claim, which was processed in the usual and customary manner and ultimately discussed in conference. The parties' positions remained unchanged, and the Organization therefore submitted the dispute to the Board for adjudication.

The Carrier defends its decision to contract out the disputed work on the basis the pole was 95 feet tall and beyond the capabilities of its own equipment to lift and set properly. According to the Engineering Department, the Carrier's boom trucks would reach around 60 feet, but could not safely set a 95-foot pole.

The Organization, on the other hand, rejects the Carrier's assertion, citing one employee's report that he had previously used the 60-foot boom trucks to set poles 90 feet and longer, and his opinion that a boom longer than the pole is not needed to set it

safely. Engineering Department staff rejected this opinion, persisting in the opinion that this was not a safe practice and noting that the worksheets attached to the Organization's report referred to the placement of poles only 45 and 65 feet in length. The Engineering Department also cited limited room to maneuver the boom truck where the pole had to be located. The Organization did not respond to this letter concerning the Engineering Department's assessment.

Numerous Boards have upheld the Carrier's right to contract out work otherwise covered by the Scope Rule when special skills, equipment, or material are required and are not possessed by the Carrier or its employees. In Third Division Award 18046, for example, the Board upheld the Carrier's right to contract out the work of setting a 90-foot pole in a ten-foot hole where it did not have the specialized equipment necessary to do so. Also see Third Division Awards 39605, 20785, and 18931.

In this case, it is undisputed that the coax cable was installed by the Carrier's forces, and the pole was being set for part of the signal system. Nonetheless, while it is true that Signal forces have performed the work of setting poles in the past using the Carrier's boom trucks and, therefore, have the skills to do so, the Organization failed to refute the Carrier's evidence and opinion that it lacked the specialized equipment to perform the work of setting the 90-foot pole safely. Management had an obligation to protect the safety of its employees, its equipment and its property, and thus had the right to make a reasonable assessment of the safety requirements for the operation. Because the Engineering Department's assessment has not been refuted, the Carrier was justified in concluding that it lacked the specialized equipment necessary to perform the work. The Board therefore finds that its decision to contract out the disputed work did not violate the Scope Rule.

AWARD

Claim denied.

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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 11th day of January 2011.