

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41618
Docket No. SG-41471
13-3-NRAB-00003-100297

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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. W. Durham, for 151.5 hours at his overtime rate of pay, account Carrier violated the Current Signalmen’s Agreement, particularly Rules 1 and 16, when it called another employee instead of the Claimant to refuel generators on his assigned territory from February 2, 2009, through February 16, 2009, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1518637. General Chairman’s File No. S-1, 16-1000. BRS File Case No. 14421-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 Carrier responded to a major electrical power outage following a storm in parts of Missouri and Arkansas by putting out and refueling generators to restore the signal system. There is no dispute that the January 26 and 27, 2009 storm constituted an “emergency” disrupting railroad traffic and the signal system. Nor is there any dispute that because commercial power did not resume, the generators backing up the system had to be constantly refueled.

The dispute herein, is that once the systems were operational, the Organization maintains that the emergency ended. The Carrier asserts that this was a continuing emergency and it therefore had the right to use a junior employee on the Claimant’s territory to refuel the generators. The Organization argues that it did not file a claim while a true emergency existed, but only after the emergency had ended: February 2 through February 16, 2009. Signal forces installed the generators and refueled them around the clock during the emergency, but once the system was fully functional, the work belonged to the Claimant. It was on his assigned territory. The Carrier’s use of a Relief Maintainer from another gang to work overtime on those generators violated the Claimant’s rights. The Claimant was denied a work opportunity on his territory. These generating systems are clearly covered by the Scope Rule as supported by Third Division Award 37795. The “current generating systems” refer to the generators that continue to supply power to the signal systems. The Carrier’s attempt to extend the “emergency” so as to permit Scope protected work to be performed by a junior employee, rather than the regular assignee (the Claimant) violates Rule 16 of the Agreement (Third Division Awards 33909 and 29536). The Organization maintains that this work is covered by the Scope Rule of the Agreement.

Conversely, the Carrier argues that the emergency was continuing due to the fact that there was no restoration of power. That is why the generators were attached to the signal system and their maintenance was required inasmuch as no normal power had been restored. More importantly, although this was an emergency permitting all available signal forces to work wherever necessary, the portable generators are not covered by the Scope Rule of the Agreement, because they are not “appurtenances and apparatus” of the signal system as covered by the Scope Rule. The Carrier contends that there is a clear delineation of exclusive work belonging to the Signal forces and this work is not the exclusive work of the Signal craft.

The Board carefully reviewed the on-property record and concludes that there is no Agreement language that explicitly includes the addition of temporary generators. These portable generators do not fit within the Scope Rule. There is

nothing in this full record to show any factor different from two other Awards on this property and between these parties which concluded a lack of any language or exclusivity that would secure this work to the employees. In Public Law Board No. 7270, Award 1, the Board found that temporary generators “sit outside the signal system because they are merely replacing commercial power, which is on the other side of “the necessary service connections.” The Award found that they are not an “appurtenance” to the signal system. Further, Third Division Award 41131 similarly concluded over the same basic facts, that there was no showing that the Organization had historically and exclusively performed the work, to “the exclusion of other employees or contractors.”

The Board carefully reviewed the Organization’s reliance on Third Division Award 37795. That Award is not on point. It is a similar dispute, but with another Carrier and another Scope Rule and there is no showing in this record of any similarity of Agreement language or historical performance to the exclusion all others in the use of only Signal forces.

In the record that exists on this property and over this dispute, the Carrier’s arguments must prevail. The Organization has not met its burden to demonstrate that the Scope Rule covers portable generators and that they are within the exclusive control of Signal forces.

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 24th day of April 2013.