

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41620
Docket No. SG-41503
13-3-NRAB-00003-110078

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
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(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. A. Toal, K. R. Barker, and M. A. Dugger for 10 hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 4, when it allowed contractors to perform boring for the installation of a signal cable at a road crossing located at M.P. 494.67 on or about July 16, 2009. Carrier’s File No. 1525274. General Chairman’s File No. S-SR, 4-1022. BRS File Case No. 14444-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 relevant facts are not in dispute. On June 28, 2009, Foreman Toal worked with a gang which bored under the track. They were told not to bore across Council Road on that day. Later, on July 14, Manager Pipkin directed Foreman Toal to drop off the pipe-boring trailer for the use of contractors where they had been working. There is no dispute that the contractors came onto the property and at Mile Post 494.67 Council Road, Oklahoma City, Oklahoma, around July 16, 2009, the contractors bored a signal cable that would go to a highway gate crossing. The Organization argues that the use of the contractor violated the Scope of the Agreement as well as Rule 4. The Scope Rule states in part that: “This agreement governs the rate of pay, hours of service and working conditions of employees in the Signal Department who construct, install, test, inspect, maintain or repair the following: 2. High tension or other lines of the Signal Department, overhead or underground, . . . wires or cables, pertaining to railroad signaling, . . .” [Emphasis added] Additionally, Rule 4 clearly states:

“When earth boring machine is used in signal department work, the following minimum force will be used; one signalman, two assistant signalmen or two assistant signalman candidates.”

The Organization maintains that there can be no doubt that the boring machine was used on the Carrier’s property by contractors to perform work reserved to BRS-represented employees. It further dismisses the Carrier’s denial with documented statements that this occurred.

The Carrier responded by asserting that the Scope Rule did not apply to the instant work. First, the use of directional boring was already shown to be work that was not exclusively reserved to BRS-represented employees. It contended that it was work historically performed by contractors. Second, the Carrier averred that there was a well-established history of contracting out the work disputed; that since 1987, it had contracted out directional boring at approximately 80 crossings. Statements of support were provided, as well as a list of more than 116 occasions on which contractors did boring, directional and horizontally without objection. Thirdly, the Carrier argued that the work of this project involved cutting and repairing a roadway, as well as boring, and could not be completed by Carrier forces alone. Because the Carrier was not required to piecemeal the work, it was properly performed by the contractor. Lastly, the Carrier noted that Rule 4 refers to a vertical boring machine for setting signal poles and has nothing to do with directional boring or horizontal boring.

The Board carefully and fully followed the Organization's arguments, as it has the burden of proof. After full review, the Board finds that the Organization has not provided sufficient evidence to prove that the work in question is covered by the Scope Rule. The Organization did not sufficiently refute the Carrier's position that the very same work has often been performed by contractors on the property (Third Division Award 39468). Further, the Carrier supplied a Manger statement, which revealed that:

"O G & E Gas Company had high pressure gas line that ran parallel down North Bound lanes at Council Rd. Ok City. O G & E would not let us bore until we exposed there [sic] gas line. We had no way to cut the road surface to expose the pipe.

We hired contractor to cut road surface expose pipe and make bore. Repair road and surface. We do not have the equipment to do the cutting of the road or repair road surface." [Modified from all capital letters]

There is no proof that the Carrier had the necessary equipment, or that it had employees qualified to complete the entire job (Third Division Award 34169). The Carrier was under no obligation to piecemeal the work so that BRS-represented employees could obtain a portion of the project (Third Division Awards 36970, 34213, 20899 and 20785). Nor did the Organization present proof that the directional boring made basis for this claim was covered by Rule 4. 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 24th day of April 2013.