

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30457
Docket No. SG-30474
94-3-92-3-482

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen:

A. Carrier violated the current Signalmen's Agreement, particularly the Scope of the Agreement. The Carrier hired a contracting crew from Beaumont, TX to bore and install 4 inch pipe under 2 road crossings at Derrider, LA, 1 at Leesville LA, and 1 at Rosepine LA. The 4 inch pipe is used to contain underground signal cables, for the installation of highway crossing protection devices.

B. Carrier should now be required to pay Mr. K. L. Miller, Mr. M. J. Kaiczynski, and Mr. R. D. Craig, 40 hours pay at the pro rata rate, because of loss of work opportunity. For work performed by contractor boring road crossings at Nona Street, Leesville, LA on January 8, 1991, MP 683.88, at North Street, Derrider, LA on January 9, 1991, MP 686.65, and at 3rd Street, Derrider, LA on January 10, 1991, MP 689.29. Carrier File No. 013.31-428(1). GC File No. L-991. BRS Case No. 8634-KCS."

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 waived right of appearance at hearing thereon.

This Claim pertains to four instances in which the Carrier engaged outside forces to bore and install four-inch pipes under road crossings at Derrider, Leesville and Rosepine, Louisiana. The Claim is virtually identical to the circumstances in Third Division Award 30108, involving the same parties. That Award stated as follows:

"This Board concludes that the disputed work is expressly described in the Scope Rule. The Rule provides that agreement covered employees shall perform the 'installation' of 'highway crossing protection devices' and 'their apparatus and appurtenances.' The conduits placed under the two roads were used exclusively to carry signal circuits for grade crossing protection devices. The pipes served no useful purpose to the Carrier absent their appurtenant relation to the signal system and, thus, it is work expressly reserved to signalmen by the Scope Rule. Third Division Award 12697. Stated differently, the conduit was integral to the installation of highway protection devices."

In this instance, the Board reaches a similar conclusion.

In the claim handling procedure, the Carrier states that certain communities (Beaumont, Texas is given as an example) do not permit anyone to bore under a road unless the persons involved have been licensed for such work. In its Submission, the Carrier states that the same requirement applies to the Louisiana cities in which the work was performed. No proof of this is provided by the Carrier. As noted by the Organization, however, such reference to Louisiana cannot be found within the appeal responses on the property, and the Board is not empowered to accept such new evidence.

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As in Second Division Award 30108, the Carrier contends that the Claim did not reach the Board in timely fashion and thus should be dismissed. For some reason, the Organization had requested an extension of time during the claim handling procedure. Why this was requested is not specified. The fact remains, however, that the Organization submitted this dispute to the Board within the requisite nine months from the date of the response of the Carrier's highest official.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.