

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31630
Docket No. SG-31403
96-3-93-3-328

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on The Kansas City Southern Railway Company (KCS):

CASE No. 1

Claim on behalf of C.H. Crowson, K. Chao, M.L. Loyd and N.E. Nicholas for payment of 10 hours each at their respective straight time rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor on July 28, 1992, to perform the covered work of installing conduit for a grade crossing signal system at mile post B735.4 on the Lake Charles Branch, and denied the Claimants the opportunity to perform this work. Carrier's File No. 013.31-428(11). General Chairman's File No. 1-1085. BRS File Case No. 9069-KCS.

CASE No. 2

Claim on behalf of T.C. Johnson, M.J. Kalczynski, D.R. Riggs and J.R. McCrary for payment of 10 hours each at their respective straight time rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor on July 22, 1992, to perform the covered work of installing conduit for grade crossing signal systems at mile posts 772.42 and 773.32 at Dowling, Texas, and denied the Claimants the opportunity to perform this work. Carrier's File No. 013.31-428(10). General Chairman's File No. 1-1084. BRS File Case No. 9069-KCS.

CASE No. 3

Claim on behalf of B. Fletcher, P.W. Darity and J.R. Parson for payment of 10 hours each, and D. T. Taylor for payment of eight hours, at their respective straight time rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor on February 27, 1992, to perform the covered work of installing conduit for a grade crossing signal system at mile post 527.59 at Vivian, Louisiana, and denied the Claimants the opportunity to perform this work. Carrier's File No. 013.31-428(9). General Chairman's File No. 1-1059. BRS File Case No. 9069-KCS.

CASE No. 4

Claim on behalf of J.R. McCrary, R.H. Brown and D.T. Davis for payment of 10 hours each at their respective straight time rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor on February 26, 1992, to perform the covered work of installing conduit for a grade crossing signal system at Jefferson, Texas, and denied the Claimants the opportunity to perform this work. Carrier's File No. 013.31-428(8). General Chairman's File No. 1-1069. BRS File Case No. 9069-KCS.

CASE No. 5

Claim on behalf of C.H. Crowson, D.A. Luman and N.E. Nicholas for payment of 10 hours each at their respective straight time rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor on March 2, 1992, to perform the covered work of installing conduit for a grade crossing signal system at Gramercy, Louisiana, and denied the Claimants the opportunity to perform this work. Carrier's File No. 013.31-428(7). General Chairman's File No. 1-1060. BRS File Case No. 9069-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.

These five claims concern instances in 1992 where the Carrier failed to utilize Signalman forces to perform work of "installing conduit for a grade crossing signal system". Instances of virtually identical work performed in 1991 by outside forces were reviewed in sustaining Third Division Awards 30108 and 30457, both involving the same parties and both issued by the Board in 1994.

The Board has reviewed its earlier findings in Awards 30108 and 30457 and finds no basis to distinguish them from the circumstances involved in the five instances now in dispute. Award 30457 cites Award 30108 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 view of these previous findings, even if they were not available to the Carrier in 1992, there are grounds for sustaining the claims in full.

In this instance, the Carrier notes that the Claimants "worked on claim dates" and thus lost no compensation and are not entitled to remedial pay. The Organization contends this argument was not raised on the property during the claim handling procedure and is improperly before the Board. Whether or not so raised, the fact is that the instances here represent lost work opportunities which otherwise would have been afforded to the Claimants. The Board finds appropriate the requested pay at pro rata rate.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the disputes 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 29th day of August 1996.