

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31687
Docket No. SG-31819
96-3-94-3-111**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Atchison, Topeka & Santa Fe Railway**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of H.G. Forrest and D.L. Levell for payment of 72 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized an outside contractor to perform the covered work of installing signal system electrical equipment from November 6 through November 17, 1992, at Willow Springs, Illinois, and deprived the Claimants of the opportunity to perform the work." Carrier's File No. 93-14-47. General Chairman's File No. 1-1114. BRS File Case No. 9306-ATSF.

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.

The record on property demonstrates the following facts. The Carrier utilized Hyre Electric beginning on November 6, 1992 to dig a trench for an electrical conduit, attach cases to sides of signal houses, and to install and hook up wires, breaker boxes, breakers, transformers and a meter base. The work was performed by this outside contractor at Willow Springs, Illinois, and completed on November 17, 1992.

The Organization's claim is submitted on behalf of two signalmen for violation of the Scope Rule. In pursuing this claim the Organization argued that the equipment was an integral part of the signal system and furnished pictures of the work performed by the outside contractor.

As this claim progressed, the Organization further argued that the Carrier violated a Letter of Understanding dated November 2, 1992 with regard to meter poles and meter pedestals. The Understanding gave signal forces the work of performing "all trenching, laying of conduit" and cable with connections from the pole or pedestal to the original apparatus on Carrier's property. The Organization also noted that the work performed was exempt from local ordinance by the National Electric Code. As this work was performed on Carrier's property by outside contractors, it violated the Scope of the Agreement, the Letter of Understanding and was permissible by the employees under the National Code.

The Carrier denied the claim asserting that the work performed necessitated an outside contractor due to local codes adopted by the Village of Willow Springs. The Carrier argued that only electricians meeting local codes could perform the disputed work. In correspondence on property, the Carrier argued that it followed the same pattern of contracting out this work as it had at other named locations. Additionally, the National Electrical Code as well as the Letter of Understanding were neither germane nor violated. In short, the Carrier holds to the central defense that the employees were not qualified under local government codes.

Reviewing only the materials presented and argued on property the Board concludes that the work performed was on Carrier property within the city limits of Willow Springs. After weighing the evidence to reach a determination on merits, the Board must deny the claim. This is due to the fact that this Board can find no denial of the Carrier's central defense, "that our signal employees do not meet the legal requirements to have performed the work in question." There is no rebuttal to this repeated assertion.

The Organization's assertion that the Code was inapplicable or that no license was required was responded to in denying the claim. The Organization was thereafter unable to establish substantial evidence for this Board to support the claim. Even if a license was unnecessary, the code requires examination and no evidence of employee qualifications was ever submitted. This decision is consistent with past decisions of this Board (Third Division Awards 12970, 12336, 10977).

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 29th day of August 1996.