

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33158
Docket No. SG-34213
99-3-97-3-776**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Wheeling & Lake Erie Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling & Lake Erie Railway Company (W&LE):

Claim on behalf of S.F. Smith, G.J. Remenaric, R.A. Reynolds, J.J. Gresh, and C.H. Morgan II for payment of 120 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a contractor to install a railroad crossing protection system at Madison Avenue in Canton, Ohio, between August 12 and September 6, 1996, and deprived the Claimants of the opportunity to perform this work. General Chairman’s File No. 231/960917A. BRS File Case No. 10395-W&LE(S).”

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 five named Claimants in this dispute were regularly assigned to various positions on the signal gang headquartered at Brewster, Ohio, during the time period covered by the claim. The dispute centers around Carrier's use of a private contractor to install a highway grade crossing protection system at Canton, Ohio. The installation was made in compliance with an order of the State Public Utilities Commission which contained a stated completion time.

The Scope Rule of the negotiated Agreement between the parties states in its preamble as follows:

"RULE NO. 1 SCOPE RULE

This agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, reconstruction, removal, reconditioning, installation, reclaiming, maintenance, dismantling, boring, digging, trenching, repairing, inspection and testing, either in the signal shop, or in the field of the following:"

Section "L" of this Scope Rule reads as follows:

- "L. This Scope shall not prohibit the contracting with outside parties for the first installation of any interlocking plant, any automatic signal system, and centralized traffic control system, or any car retarder system provided the following:**
- (1) The Carrier shall not contract out daily maintenance and repair work of the systems covered by the Scope.**
 - (2) With respect to signal system work that is contracted out, BRS members will be utilized when the final connections into live signal system are made.**
 - (3) The W&LE and the BRS General Chairman will meet and discuss contracting out projects before a contract is let for installation or construction work performed on the W&LE.**

- (4) There will be no contracting out of work on the W&LE while any BRS member is on furlough.
- (5) That highway grade crossing protection can not be contracted out except when it is not possible with the existing manpower to comply with a public service order.
- (6) The purchase of shelf materials and the design of S&C installations will not be considered contracting out."

By order dated August 3, 1995, the Public Utilities Commission of Ohio issued construction authorizations for several crossing protection systems including the instant project.

On April 29, 1996, Carrier notified the Organization of its intent to use a private contractor to perform the installation here in dispute. The parties met and discussed the situation. The Organization disagreed with Carrier's position on the subject and subsequently initiated the penalty claim which is the subject of this dispute.

At the outset of our determinations, it is noted by the Board that Claimant S. F. Smith voluntarily resigned from Carrier's service effective October 2, 1996. His resignation notice specifically released the Carrier "from any and all claims or liability out of my employment. . . ." Therefore, Mr. Smith is not a properly included Claimant in this dispute.

The Organization argued that the Carrier had, over the years, reduced the total work force by attrition and had not maintained the work force which existed in 1991 when the Organization became the representative agent. Therefore, it contended, the absence of Signalmen to do the work here in dispute is a result of Carrier's failure to maintain an adequate work force and such an action is a violation of the Scope Rule.

Carrier insists that the language and intent of the Scope Rule were fully complied with in this instance. It argues that during the time period involved in complying with the P.U.C. order there would be approximately 6,610 man-hours of work required to fully complete the ordered installations. At the same time, Carrier asserts, there were approximately 6,746 man-hours of "other signal installation and/or renewal projects scheduled to be completed. . . ." This total workload, Carrier insists, required the use

of the private contractor and such use was specifically permitted by the language of Section "L" of the negotiated Scope Rule.

The case record as presented to the Board contains substantial evidence to support the Carrier's position in this case. There has been no probative evidence presented to support the contention that Carrier somehow deliberately reduced Signaller forces in anticipation of using a private contractor to perform the P.U.C. ordered installation here in question. Rather, the record contains uncontroverted evidence that at the time the contracting out was performed there were, in fact, no furloughed Signallers. The Organization was informed of the intent to contract. The parties met and discussed the situation. There is nothing in the record to challenge or contradict Carrier's assertions relative to the 6,610 man-hours for P.U.C. ordered installations versus the 6,746 man-hours of "other signal installations and/or renewal projects" scheduled to be performed by the Signallers. The determination to use the private contractor in this situation was permitted by the specific language of the negotiated Scope Rule. Therefore, the claim as presented is 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 25th day of March 1999.