

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34169
Docket No. SG-34216
00-3-97-3-947**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of M. R. Efaw Jr., C. E. Potter, R. A. Witt, D. E. Podlesnik, D. P. Sweitzer, S. N. Woods, M. T. Appel, C. L. Setty, W. R. Kanouse, C. D. Guess, and T. F. Sandefur for payment of a total of 540 hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a contractor to install conduit for the signal system at various highway crossings in Cumberland, Maryland, from June 10 to July 8, 1996, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(96-325). BRS File Case No. 10308-B&O.”

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.

During the period of June 10 to July 9, 1996, the Carrier's hired contractor, Danella Construction Company, used a directional boring rig to install underground conduit, used for carrying cable for the operation of the signal systems, at various highway crossings in Cumberland, Maryland. In a letter dated August 6, 1996, the Organization alleges that the Carrier violated the Scope Rule when it allowed the contractor to perform the conduit installation. In its claim, the Organization seeks compensation for loss of opportunity to perform work totaling 540 hours straight time. In a letter dated October 4, 1996, the Carrier denied this claim noting, among other things, that contractors performed this type of work "... many times in the past without claim." At issue in the case at hand is the Scope Rule, which reads in pertinent part:

"SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all employees classified in Article I of this Agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair and painting of:

- (a) Signals including electric locks, relays and all other apparatus considered as a part of the signal system, excluding signal bridges and cantilevers.
- (b) Interlocking systems, excluding the tower structure.
- (c) Highway crossing protection controlled or actuated by track or signal circuits.
- (d) 1. Signal Department conduits, wires and cables, overhead or underground.

* * *

No employees other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein except that signal supervisory and signal engineering forces will continue in their supervisory capacity to make such tests and

inspections of all signal apparatus and circuits as may be necessary to insure that the work is installed correctly and properly maintained. The term 'emergency' as used herein is understood to mean the period of time between the discovery of a condition requiring prompt action and the time an employee covered by this Agreement can be made available."

The Organization contends that the conduits are an integral part of the signal system and are used exclusively for the operation of the signal system. It cites Third Division Award 30108 which reads in pertinent part, "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 the signalmen by the Scope Rule," as controlling in the case at hand. In addition to the Board's decision in Award 30108, the Organization asserts that the Carrier had the necessary equipment to conduct the conduit installation and that its Claimants had the skills required to do the job. Additionally, the Organization contends that it was a routine practice for Signal Gangs to install underground conduits for signal systems at highway crossings. The Organization contends that the Carrier's defenses that it did not possess the equipment, and that the Claimants did not have the training to operate the directional boring rig, are without merit because Signal Gangs had performed this same kind of work at other locations and the Claimants completed the installation of the conduits at the crossings in Cumberland. Further, the Organization maintains that the work was eventually turned over to the Claimants because the contractor had problems completing the conduit installation. Therefore, the Organization concludes that because the work had to be turned over to the Claimants for completion, and because Signalmen have previously performed this type of work, there is no basis for the Carrier's assertions that it lacked the necessary equipment and skills to complete the job.

The Carrier denies that it possesses the directional boring rig equipment that was used to perform the work in question. The Carrier also asserts that because it does not possess directional boring equipment, none of the Signal Department employees are trained in its use. The Carrier contends that it has the right and obligation to conduct its business in the most cost effective manner, unless limited by the negotiated Agreement. Further, the Carrier maintains that it is not obliged to rent equipment it does not possess, nor is it obligated to incur the extra expense of training its employees in the use of equipment it does not own. Additionally, the Carrier contends that the task of boring is not reserved to Signal Department employees when it requires specialized

equipment, not owned by the Carrier, that can evade utility lines under multiple tracks, thus avoiding potential dangers of installing conduit at the sites in question.

Third Division Award 24538 is on point in the case at hand. In that Award the Board held that:

“‘Boring’ work is not one of the many activities specified in the Scope Rule. The Carrier cites six previous instances in which similar subcontracting was undertaken without subsequent dispute. The Board concurs with the Organization that ‘the agreement is superior to practice.’ To repeat, however, the ‘agreement’ in this case — while otherwise quite precise — makes no reference to the specific task of ‘boring.’”

The instant Scope Rule does not identify boring as a task exclusive to the Signalmen’s craft. Also, there is no evidence on this record that the Carrier does, indeed, possess the boring equipment in question, or that the Claimants are trained to operate such equipment. Additionally, it is unreasonable for the Organization to expect the Carrier to train the Claimants on equipment it does not own.

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 20th day of July, 2000.