

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36930
Docket No. SG-36221
04-3-00-3-428**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Paducah & Louisville Railway, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Paducah & Louisville Railway (P&L):

Claim on behalf of L. R. Keeling for payment of 96 hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendix 1 and the Letter of Understanding dated April 23, 1999, when beginning on June 14 through June 30, 1999 Carrier permitted an outside contractor employee to perform work covered under the Signalmen's Agreement and deprived the Claimant of the opportunity to perform this work. BRS File Case No. 11405-P&L.”

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.

As in companion cases filed at or about the same time, the basic facts in this case are not in dispute. By letter dated July 21, 1999, the Organization submitted a claim seeking a total of 96 hours at the overtime rate of pay (\$2,862.72) on behalf of Signal Inspector L. R. Keeling contending that the Carrier violated Appendix 1 of the parties' Agreement and a related Letter of Understanding when ". . . the Carrier allowed employees of Interrail Signal Engineering, Inc. and Mr. Mike Hudson to check out and cut over Ponds and Dawson CTC Control Points when it was agreed the only work this contractor would do were six highway grade crossings." According to the claim letter, the violations occurred on June 14 to 18 and from June 29 to 30, 1999.

The controlling Agreement language is found in Appendix 1 of the Scope Rule and a Letter of Understanding dated April 23, 1999, reading in pertinent part, respectively, as follows:

"Appendix 1

This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department (except supervisory forces above the rank of inspector, clerical forces and engineering forces) performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling, inspection, testing and maintenance, either in signal shops or in the field, of the following:

(a) All signals and signaling systems, traffic and C.T.C. control systems; interlocking plants and interlocking systems; train stop and train control equipment and devices, except that on rolling stock; car retarders and car retarder systems; highway crossing warning devices and their appurtenances; low voltage electric switch lamps; metal train order signals; spring switch mechanisms, except when sent to reclamation shops for renewal and scrap; trackside track occupancy indicators; bonding of track pertaining to the systems and devices herein and bonding for static protection (excluding the removal of bonds when jointed rail is being replaced by welded rail.)

*** * ***

Letter of Understanding, April 23, 1999

This will serve to confirm the mutual understanding that the Brotherhood of Railroad Signalmen, representing the Paducah & Louisville Signal Department Employees, will allow the Paducah & Louisville Railway, Inc. of Paducah, Kentucky to utilize an outside Contractor (Outside vendor) for a limited time and specified purpose. Such contractor will be utilized only when BRS forces are fully staffed on the Paducah & Louisville (no less than six employees). It is agreed that an outside contractor may perform work in connection with the installation of Highway-rail Grade Crossing Warning Devices at the following location and for the period specified herein:

(A) During the month April 1999 and thereafter for a period not to exceed one year the BRS plans to install six (6) Highway-rail Grade Crossing Warning Devices at:

1. New Bypass, Highway 121, Mayfield, KY.
2. Rod Roy Road, MP 106, near Beaver Dam, KY.
3. Mount Pleasant Road near Beaver Dam, KY.
4. Fourth Street, West Point, KY.
5. Bernhiem Lane, Louisville, KY.
6. Wathem Lane, Louisville, KY.

It is understood that the Contractor will be permitted to perform only the work directly associated with the installation of the Highway-rail Grade Crossing Warning Devices at the six locations listed above. Further, the parties agree these locations will be the only location that the Contractor will be permitted to [do] signal work."

In its initial denial and throughout handling on the property, the Carrier merely reiterated the facts set forth in the claim letter but provided no reason at all for denying this claim; but merely asserting, "there is no basis for this claim." [Timeliness defenses interposed by the Carrier in the mid-level appeal denial were met with an assertion by the Organization that the Carrier had granted a time extension. Thereafter, the procedural objection apparently was abandoned in the handling before the Board].

In its written Submission to the Board, the Carrier contended for the first time in the handling of the case that Mr. Mike Hudson Interrail Signal Engineering, Inc. was also on site to provide technical support, due to the fact that his company designed and provided all blueprints for this project. Even if, arguendo, this might have constituted a valid defense to the Organization's prima facie showing that the Carrier violated the cited Agreement provisions, we may not consider evidence and arguments advanced de novo at the Board level. For reasons set forth more fully in Third Division Award 36929, this claim is sustained.

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 22nd day of March 2004.