

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37309
Docket No. SG-37702
04-3-03-3-39

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Clinchfield
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of D. L. Love, E. W. Sell, III, C. A. Hensley and M. R. Hillman, for 40 hours each at their respective straight time rates of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed outside contractors to install a wheel impact detector at MPZ 125.3, on November 12 through November 16, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(02-0051). General Chairman's File No. 12182001-1. BRS File Case No. 12431-CLINCH.”

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 record demonstrates that a signal force was used to assist with the installation of a wheel impact detector at Mile Post 125.3 during November 2001. Specifically, during the week of November 12, 2001, contractors were used on the project to install a "weigh in motion" sensory system within the wheel impact detector. Thereafter, the "final cutover," or installation work, was performed by Signal Department employees.

On December 18, 2001, the Organization submitted a claim in which it asserted that ". . . the Scope Rule was violated when contractors finished the installation of a wheel impact detector at MPZ 125.3." The claim requested that the four individuals, noted supra, "be allowed forty hours each at the straight time rate."

The Carrier's January 11, 2002 denial reads, in pertinent part, as follows:

"Contractors were utilized to install a highly complicated weigh in motion sensor system, on the existing track structure. The installation of this system requires skills, and tools, that were well beyond the practical reach of the employees mentioned in your claim. Tools like rail polishing tools, flash welding equipment, precise measurement tooling, and etc. This work was done just after the above mentioned employees were furloughed, and admittedly the timing of that was not great, but the contractors did not finish the DD installation. They merely installed the weigh in motion part that had to be precisely flash welded to the rail, and tested their work with the associated electronics inside the WILD DD housing. The complete system wiring, download programming, testing, and subsequent final cutover was work, which was performed by personnel covered under the current BRS Clinchfield agreement."

The claim was subsequently appealed by letter dated March 7, 2002, in which the General Chairman asserted that "... the installation and testing of the weigh in motion portion of the WILD DD is certainly within the ability of the signal craft." In its final denial to the appeal dated May 1, 2002, the Carrier contended:

"A close inspection of the rule reveals it contains no mention of the wheel impact detector cited in the claim. Moreover, the detector in question is a highly complex weigh in motion device as well as an impact detector. The employees you represent have never installed this apparatus nor have they a contractual right to do so. Therefore, it is the Carrier's position that it did not violate the Scope Rule of the agreement when the equipment at issue was not installed by members of the Organization."

The Organization asserts that the Carrier allowed an outside contractor to perform work that accrues exclusively to employees of the signal craft, and in doing so, violated the Scope Rule of the Agreement. The Scope Rule, however, is general in nature and does not specify which work functions are exclusively within the jurisdiction of the craft. Absent the specific mention of the work in dispute, the burden of proof is on the petitioner to show a system-wide, exclusive right to such work exists by custom, tradition, or practice. The record in this case is bereft of such proof.

Moreover, although the Organization alleges that the "... Carrier used non-covered employees to finish the installation of the wheel impact detector. ..." the record demonstrates that the outside contractor installed the weigh-in-motion sensory system within the wheel impact detector, after which members of the signal craft performed the final cutover and any installation work necessary thereafter. In that connection, although the Organization maintains that the Claimants were "entitled" to the work and had performed "similar" installations, there is no evidence on the record which supports that position.

Premised upon all of the foregoing, the claim must be denied.

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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 21st day of December 2004.