

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37610
Docket No. SG-37672
05-3-03-3-19

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP).

Claim on behalf of M. J. David, J. A. Miller, C. Johnson, C. D. Patterson and D. Dissinger, for 24 hours each at their respective time and one-half rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 80, when it allowed employees not covered by the Agreement to install a retaining wall specifically for a signal housing on August 28, 29 and 30, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 1296966. General Chairman’s File No. Nscope-249. BRS File Case No. 12265-UP.”

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.

On the claim dates the Claimants were assigned as Signalmen on Construction Gang 3955.

On August 28, 29 and 30, 2001 the Carrier used employees of another craft to install a retaining wall or berm to support a signal house and equipment.

On October 27, 2001 the Organization submitted this claim asserting a Scope Rule violation, in particular Item 5, which reads:

"5 Carpentry, painting, concrete and form work of all classes in connection with installing, repairing or maintaining signal, relay housing, crossing flashers and gates, interlocking or retarder systems, apparatus or device. (Excluding the erection and maintenance of buildings, or precast foundations purchased from manufacturers.)"

It argues that the work done was solely for the purpose of protecting signal equipment. The Carrier did not refute the Organization's statement as to the nature of the work.

The Organization also submits that it has done this type of work in the past, which the Carrier did not deny.

To buttress its argument the Organization submitted Award 12 of Public Law Board No. 5565 which involved similar work. In that case the Board ruled as follows:

"It is readily evident from the photographs that the existence of the it (sic) wall is only in conjunction with the signal and but for the placement of the signal at this location, there would have been no need for a retaining wall at that particular spot. Given the nature, purpose and function of this particular retaining wall, it may fairly be described as an 'appurtenance' of the signal system. As such, the work of its construction was reserved for signal forces by the plain language of the NIRC/BRS Agreement Scope Rule, *supra*, and Carrier violated that Agreement when it used other than signal forces to perform the work of constructing this particular retaining wall."

The Carrier argued that the work done is not reserved to BRS-represented employees. In support of its position the Carrier cited Third Division Award 31969 which involved the parties to this dispute. In that case the Board ruled:

"On November 23 and 24, 1993, Maintenance of Way employees in the Carrier's Structures Department constructed a berm and retaining wall on the Harvard Subdivision at Mile Post 43.43. The Organization asserts that the construction was put in place to hold the ground fill which supported a signal foundation and associated appurtenances and was therefore work covered by the Organization's Agreement. The Carrier asserts that the work completed by the Maintenance of Way employees was to keep the ballast from sliding away from the track in the area of the switch blowers and signal case and was properly assigned to the Maintenance of Way employees. Signal Department employees previously installed the signal foundation directly supporting the associated appurtenances (signal relay cases).

Citing its Scope Rule (' . . . construction . . . of signals or signal systems with all appurtenances on or along the railway tracks . . . as follows: . . . [i]nstalling foundations directly supporting signals or associated appurtenances'), the Organization claims the work. The Organization's Scope Rule, however, does not clearly support the Organization's claim to assignment of this kind of construction. While it is certainly arguable this kind of construction falls under the Organization's Scope Rule, there is no specific mention of this particular construction in that Rule. To that extent, we do not find the Organization's Scope Rule has specifically reserved the disputed construction work to Signal employees.

In Public Law Board No. 2960, Award 175, a similar dispute arose between the Carrier and Maintenance of Way where the Signal employees were the beneficiary of the assignment of construction of 'a wooden retaining wall to support the ground fill upon which the supporting platform for the signal and battery box . . . was to be constructed. . . .' That Board denied the claim to the work by Maintenance of Way. Citing the Scope Rules of Maintenance of Way and the Organization, and further noting that the Maintenance

of Way Scope Rule was 'less specific' than the Organization's Scope Rule, that Board observed:

'This is a case where the language in the contracts of two different crafts seems to grant rights to the same work to both groups.'

We agree with that observation. Because the disputed work is not specifically reserved by the Organization's Scope Rule to Signal employees and because the Organization has not demonstrated the existence of exclusive history, custom or practice whereby Signal employees have performed the work, we must deny the claim."

It should be noted that in the Award cited by the Carrier the work done was to support the track ballast as well as the signal equipment.

We agree with Award 31969 that the work of constructing berms is not exclusively reserved to any craft. However, as in this case where the work was for the exclusive purpose of protecting signal equipment, such work belongs to BRS-represented employees.

As such, this case will be partially sustained. However, as concerns the remedy, Claimant C. Johnson was on vacation at the time and, therefore, he is not entitled to any remuneration. All other Claimants were fully employed on the claim dates and compensated, including overtime. Because the Carrier properly relied on a previous Award in determining the work assignment, the Board will award all Claimants, other than Johnson, eight hours' pay at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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 September 2005.