

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39605
Docket No. SG-39148
09-3-NRAB-00003-050609
(05-3-609)**

The Third Division consisted of the regular members and in addition Referee Joan Parker when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Rail
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of C. Alvarez, O. Ducksworth, M. E. Kendryna, W. R. Kirkpatrick, R. S. Porus, and R. W. Sorensen, for eight 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 contractors to install signal conduits (pipes) on a bridge on July 24, 2004, at Mile Pole 27.10 on Metra’s Southwest Service and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-3.3-462. General Chairman’s File No. 62-SW-04. BRS FILE Case No. 13526-NIRC.”

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.

At the time this dispute arose, Claimants C. Alvarez, O. Ducksworth, M. E. Kendryna, W. R. Kirkpatrick, R. S. Porus, and R. W. Sorensen were assigned to the Maintenance Signal Gang headquartered at Western Avenue on the Milwaukee Operating District. They were working in positions subject to the General Rules Agreement between Metra and the Brotherhood of Railroad Signalmen, effective March 1, 1984, as amended.

In conjunction with the Southwest Service expansion project, the Carrier contracted out bridge replacement work. This dispute arose because the Carrier used the contractor to install conduit for signal cables across bridge decks on Metra's Southwest Service at Mile Pole 27.10 on July 24, 2004. The Organization submitted a claim on behalf of the six claimants, contending that the Carrier violated the Scope Rule by using non-covered employees to perform the work, and it requested that each Claimant be paid eight hours at the straight time rate to compensate them for the lost work opportunity.

The Carrier denied the claim, which was processed in the usual and proper manner and ultimately discussed in conference. The parties' positions remained unchanged, and the Organization therefore submitted the dispute to this Board for adjudication.

The Organization rejects the Carrier's assertions that the work in question required specialized equipment and was part of bridge structure and design. It insists that the work was scope covered signal work and that the Carrier was obligated to negotiate any deviations from the Agreement's requirements. In response to the Carrier's contention that it was not required to piecemeal projects, the Organization argues that the Carrier failed to show that assigning the work to BRS-represented employees would have irreparably delayed the project or resulted in some other hardship. According to the Organization, there was nothing unique

about the work in dispute; conduit systems are routinely installed by signal employees, even spanning bridges. Given the Carrier's violation of the Agreement, the Organization submits that the Claimants are entitled to a financial remedy.

The Carrier denies any violation of the Agreement or past practice. It takes the position that the work was part of bridge design, which is not covered by the Scope Rule. Moreover, the disputed work required a specialized piece of equipment, a concrete core drill, which was not possessed by the Carrier. The bridge designer used a firm that specializes in performing the type of work at issue (Concrete Core Drilling Contractors) which core drilled holes in both back walls of the bridge for installation of the conduit. Finally, the Carrier submits that it was not required to piecemeal a project that had been contracted out, which, in essence, is what this claim requests.

It is undisputed that the work at issue was the installation of conduit as part of the concrete culvert type bridge structure at Mile Pole 27.10 on Metra's Southwest Service prior to installation of cable into the conduit by signal employees. The conduit was part of the bridge manufacture and design. As such, the Carrier did not violate the Agreement by contracting out the work. As the Carrier notes, it was not a matter of installing conduit outside of the bridge structure or laying it between the rails, which Signalmen routinely do when installing conduit on an existing structure. That was not the situation here, as was confirmed in an e-mail, dated May 12, 2005, from Director, Capital Projects J. Wilhelms. He wrote:

"Installation of the conduits by signal employees would not be advisable due to the coordination required between locating of the sleeves in the backwalls and drilling and grouting of dowels for the backwall additions.

The new bridge deck is pre-cast concrete and the manufacturer could void the warranty due to improper drilling for placement of hanger inserts.

4-6" diameter holes, 18" deep had to be drilled in both backwalls of the bridge. The concrete core drill is a large heavy piece of

equipment, scaffold was [required] to provide a platform to drill from and the drill has to be anchored to the backwall to core the holes. The concrete drill is a specialized piece of equipment and the work is generally work performed by Concrete Core Drilling Contractors. Our signal gangs have star drills for drilling conduit; however, star drills are for holes up to about 2-1/2" in diameter."

Clearly, the work involved was specialized, necessitating a piece of machinery that the Carrier did not even own and requiring the retention of a firm that specializes in core drilling. The Organization acknowledges that installation of the conduit was just part of the total work. Essentially, therefore, it wanted the Carrier to piecemeal the project. In these circumstances, however, there was no contractual requirement for the Carrier to carve out the installation of the conduits and to assign this work to BRS-represented employees. Such action could have caused significant delay and jeopardized the manufacturers' warranty for the pre-cast concrete bridge deck as a result of improper drilling.

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 1st day of April 2009.