

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39904
Docket No. SG-38716
09-3-NRAB-00003-050125
(05-3-125)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Alton & Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern:

Claim on behalf of G. M. Maxwell, J. L. Pratt and R. L. Pratt for 22 hours straight time and 1.5 hours time and one-half at their respective rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 802, when it used outside contractors to install AEI equipment on the Claimants’ territory from January 16, 2004, through January 22, 2004, and deprived the Claimants of the opportunity to perform this work. This is a continuing claim because the installations were not complete at the time of the claims submission. Carrier’s File No. 1391715. General Chairman’s File No. S-SR-471. BRS File Case No. 13117-A&S.”

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 that this dispute arose, Claimants G. M. Maxwell, J. L. Pratt and R. L. Pratt, who were assigned to various signal positions within the Signal Department.

The basic facts are not in dispute. On January 16, 20, 21, and 22, 2004, the Carrier allowed Comet Communications to install an Automatic Equipment Identification (AEI) system on the hump. The AEI system is a car tracking device activated by train movement. When a train passes over an AEI location, the device scans a bar code on each car, which identifies the car. This information is then transmitted via communications equipment from the AEI location to the Carrier's Transportation Department. It is uncontested that the AEI system is a new system that has not been previously installed by Organization members.

The Organization claims that it was improper for the Carrier to contract out the above-mentioned work, which is contractually reserved to the Organization. The Organization further claims that this work is consistent with the Scope Rule. According to the Organization, the Carrier's BRS-represented employees were fully qualified and capable of performing the designated work. The work done by Comet Communications is within the jurisdiction of the Organization and, therefore, the Claimants should have performed said work. The Organization argues that because the Claimants were denied the opportunity to perform the relevant work, they should be compensated for the lost work opportunity.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the work contracted out does not belong to BRS-represented employees under either the express language of the Scope Rule or any binding past practice. According to the Carrier, controlling precedent involving these very same parties and identical issues has upheld the Carrier's position.

Special Board of Adjustment No. 1016, Award 150 framed the scope issue as follows:

“In disputes of this kind, the threshold question for our analysis is that of scope coverage. There are generally two means of establishing scope coverage. The first is by citing language in the applicable scope rule that reserves the work in dispute to the Organization represented employees. The second method is required when the language of the scope rule is general. In that event, the Organization must shoulder the burden of proof to show that the employees it represents have customarily, traditionally and historically performed the disputed work. It is well settled that exclusivity of past performance is not required in order to establish scope coverage vis-à-vis an outside contractor.”

We carefully reviewed all evidence to ascertain whether the Organization proved that the work involved belongs to the Organization. We note that the work in question is new and has never been performed by BRS-represented employees. We note that the following language exists in the Scope Rule:

“All signals and signaling systems; traffic control systems; interlocking plants and interlocking systems . . . radio, microwave, radar, electrical and communications equipment and systems; train stop and train control systems; . . .”

As noted above, it is clear that the AEI system is new, and the work of installing such a system has not been previously performed by BRS-represented employees. Thus, the issue in this case is whether the work of installing the AEI system is covered by the Scope Rule. After a review of the record evidence, we cannot find that such work is included within the Scope Rule.

This precise issue has been previously addressed by the Board. In Third Division Award 39284, the Board made the following determination:

“The Organization maintains that the installation of AEI equipment, . . . is covered by the Scope Rule. The Organization acknowledges that the Claimants have not installed or worked on this equipment before, but argues that the Carrier has an obligation to provide training for such new signal equipment.

The Carrier asserts that this type of equipment is new to the A&S and its installation is not covered by the Agreement. The Carrier points out that its employees have never performed this type of work and would not have the ability to install it. The Carrier contends that the work of installing AEI equipment is not covered by the Scope Rule and there is no evidence of a past practice of installing such equipment. The Carrier likens the AEI systems to former ACI equipment, which performed the same function, but was not constructed or installed by signal employees on the A&S.

The Scope Rule does not specifically identify AEI work as covered. The Claimants have not previously installed AEI equipment. Nor have the Claimants installed its technological predecessor, because ACI equipment was never installed on the property. Under such circumstances, the Organization has not met its burden of proof that installation of the AEI system is covered by the Scope Rule. Accordingly, the claim must be denied.”

Based on the record evidence as well as the above-cited precedent, we cannot find that the new work of installing an AEI system is encompassed within the plain language of the Scope Rule. Thus, we find that the Organization failed to meet its burden of proof and the claim is therefore denied.

AWARD

Claim denied.

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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 31st day of August 2009.