

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40482
Docket No. SG-40418
10-3-NRAB-00003-080238

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Seaboard Coast Line):

Claim on behalf of T. S. Fleet, for 80 hours, C. D. Pasley, for 32 hours, H. D. Rhoden, for 192 hours, C. W. Stone, for 288 hours, J. T. Thacker for 224 hours, and G. H. Try, II, for 128 hours, account Carrier violated the current Signalman’s Agreement, particularly the Scope Rule and Appendix 9, when on numerous dates in 2005 and 2006, Carrier allowed employees not covered by the Signalmen’s Agreement to install satellite dishes and receivers at signal locations on the Claimant’s territories for the sole purpose of transmitting signal data and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15 (06-0067). General Chairman’s File No. SCL-07-18-06A. BRS File Case No. 13844-SCL.”

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 six claims involved in this controversy present a work jurisdiction dispute between the Brotherhood of Railroad Signalmen (hereinafter "BRS") and the International Brotherhood of Electrical Workers (hereinafter "IBEW"). Both Organizations claim that the work in dispute is covered by their respective Scope and/or Classification of Work Rules.

The Submissions of the three parties in interest are voluminous. Not surprisingly, the record developed by the Carrier and BRS on the property is significantly more extensive than usually seen. It contains more than 14 exchanges of correspondence together with attached exhibits in the form of charts, diagrams, letters, and photographs.

Much of the record developed as a history of signal technology and the changes that have affected it over the years. For the purpose of this case, signal data initially was carried over two wires between trackside train control devices and local dispatching offices in the field. Where the wires carried only signal data, the maintenance work on the wires, poles, and cross-arms was generally recognized as signal work. The centralizing of the Carrier's dispatching functions in Jacksonville, Florida, led to the use of different transmission capabilities to span the longer distances involved.

In the mid-1990s, the Carrier began implementing radio technology to carry signal data. Leased telephone circuits carried the data to a number of field locations where BCP (Base Communication Package) radios were installed. The BCP radio, in turn, broadcasted the signal data to one or more MCP (Mobile Communication Package) radios within its range. The signal data in each transmission consisted of two parts. The data contained address information as well as instruction

information. Although several MCP radios could communicate with a single BCP radio, they all had discrete addresses programmed into their memories. Thus, only the MCP radio whose internal address matched the address information in the data would respond to and pass through the information to another device called a Protocol Converter. The Protocol Converter took the data from the MCP radio and converted it into code that is understood by the trackside signal devices to instruct those devices to carry out the action specified by the instruction information. After carrying out the required action, the trackside device sent a compliance confirmation back to the Protocol Converter which, in turn, converted the data into a format that could be transmitted via the MCP radio back through the BCP radio and on to the centralized dispatching office. Once the installation and testing of the new radio communication link was completed, then, and only then, was it connected to the Protocol Converter by a Signaller. That Signaller would carry out further testing of the new technology to ensure that the trackside devices responded as they should to the test signal data. Once this second stage of testing showed the BCP/MCP radios to be working properly, the Signaller severed the connection between the trackside devices and the old wires and often cut the wires down. The obsolete poles and cross arms were apparently also removed in many cases.

It is undisputed that the BCP/MCP radio technology was installed in many locations on the former Seaboard Coast Line territory ("SCL") which is the subject of the instant claims, as well as the other constituent railroad properties that were merged into the present Carrier.

The subject of the instant claims is the installation of new equipment to transmit signal data by radio wave using satellite communications technology. According to the record, all of the locations where the work was performed were locations where the older two-wire system was still in place. The satellite link was installed to replace the wire system. As with the BCP/MCP radios, the Carrier does not dispute that the new satellite technology, once connected to the signal system, would carry only signal data.

The Carrier assigned all of the satellite installation work to the Communications craft represented by the IBEW. The work began elsewhere on the Carrier's system, but did include 11 locations on the former SCL territory that were installed in 2003 and 2004 before the instant claims arose.

After the BRS objected to what it saw as a wrongful assignment of the work by letter dated July 21, 2004, the Carrier temporarily suspended further installations while it investigated the contentions of the BRS. The Carrier determined that its work assignment did not violate the BRS Scope Rule and, therefore, resumed the installation of the satellite technology. The first five claims were filed with a date of April 7, 2006 and the sixth followed on June 14, 2006. Except for dates, locations, hours claimed, and the like, all six claims are identical in their assertions and arguments. After the Carrier's initial reply to the separate claims, they were handled as a consolidated group.

While being significantly different in its technology, the installation and function of the satellite equipment within the overall signal system is strongly similar to that of the BCP/MCP radio equipment. When signal instructions for a specific location are sent by the Carrier's centralized dispatching facility in Jacksonville, the data must undergo conversion into a format that can be sent over the internet to a satellite communications provider. That provider then bounces the signal via radio waves off a geosynchronous satellite orbiting above the Earth's equator. The transponders on the satellite then beam the data down to dish antennas located throughout the Carrier's track system. The dish antennas, which must be aimed at the orbiting satellite to obtain the greatest signal strength, carry the data inside the bungalow to an Indoor Unit (IDU). The IDU is the end of the satellite communications link. However, similar to the BCP/MCP radio technology, the IDU must pass its data to a Wayside Control Module (WCM). The WCM functions like the Protocol Converter in that it converts the satellite data into a format that can be understood and acted upon by the trackside signal devices. Once again, like with the BCP/MCP equipment, once the satellite communication link is installed and tested, then, and only then, does a Signaller connect the IDU to the WCM to perform a second stage of testing to ensure that the trackside devices respond as they should. When that second stage of testing by the Signaller confirms that proper satellite communication has been established, then the Signaller severs the former two-wire linkage.

The subject of the instant claims is the Carrier's Columbia, South Carolina, Subdivision where the new equipment was installed at several locations covering the entire territory. The BRS claims that the installation work is covered by its Scope

Rule. To the contrary, both the Carrier and the IBEW contend that the installation work is not covered by the BRS Scope Rule.

The parties cited a number of prior Awards of the various Divisions of the Board as well as Public Law Boards in support of their respective positions in the dispute. Not surprisingly, the Awards go both ways. In this kind of situation, the precedent value, if any, of prior Awards must be assessed with great caution. This is because each Award represents only a decision based on the unique facts of the discrete record presented. The decision may have resulted from an inadequately developed record. In that instance, such an Award should have little precedent value. In addition, most Awards do not provide a detailed recitation of the factual circumstances that produced the decision. Thus, the precise analysis and rationale is not clear. In those cases, too, the Award should have little precedent value. Our review of the Awards cited in this case do not persuade us that there is a dominant line of precedent that controls the disposition of the instant dispute. Therefore, as it must be, this dispute must be analyzed and decided on the unique factual record developed by the instant parties.

Given the text of the BRS Scope Rule and related Agreement language, there are three possible means by which scope coverage of the disputed work can be established. The first would be if the Scope Rule explicitly references the work as being covered. The second means would be by establishing that the work was an “appurtenance” of the existing signal system at the time it was installed and tested by the Communications employees represented by the IBEW. Third, and finally, scope coverage can be established by proving that the work was recognized as signal work. With respect to any of these three means of establishing scope coverage, the BRS solely shoulders the burden of proof to do so.

To analyze the first means, we must look to the actual wording of the BRS Scope Rule and any related supplemental language. That Agreement language, reads, in pertinent part, as follows:

- “(a) This Agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, installation, reclaiming, renewal, repair, inspecting, testing and maintenance, either in the shop or in the

field, of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train control systems; car retarders and car retarder systems; highway grade crossing warning devices and systems; defect detector systems including hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, and flood; spring switch mechanisms when protected by signals or indicators; electrically lighted switch lamps; train order signals; blower, gas, electric or other types of automatic snow removing systems installed on power-operated switches; power or signal lighting; signal batteries and associated charging and switching equipment; solar panels, sub-stations, current generating and compressed air plants, their pipe lines and connections; all relays, printed circuit boards and modules of electronic devices, used in the systems covered by this agreement; bonding of track; painting; carpenter, concrete and form work in connection with the systems and devices covered by this agreement (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above-named systems and devices, as well as any other work recognized as signal work.

- (b) No employee other than those classified herein will be required or permitted to perform any of the work covered by the scope of this agreement.

* * *

- (c) When signal circuits are superimposed or handled on systems not covered by this agreement, the employees covered by this agreement shall install and maintain superimposed on other circuits. *{sic}*

* * *

APPENDIX 9 - MEMORANDUM OF UNDERSTANDING

The Parties signatory to this letter of understanding agree that Systems and devices covered by the Scope rule are to be installed, modified, maintained and repaired by the Employees covered by the Signalmen's Agreement. It is, also, recognized, particularly in the case of new systems and devices, that the services of Technicians and/or engineers of the manufacturer are required to make the equipment or system function as intended.

It is agreed that under no circumstances will outside parties be utilized without employee/or employees covered by the Agreement being present. All testing will be of a cooperative nature. The installation, wiring and apparatus modification will be done by employees under the Signalmen's Agreement under the instructions and supervision of such Technicians and/or Engineers."

Starting with a review of Appendix 9, it is clear from its first sentence that it applies only to systems and devices that are already covered by the Scope Rule. It does not define the limits of such coverage. As such, it sheds no meaningful light on the issue of what is covered by the Scope Rule.

When we examine subparagraph (c) of the BRS Scope Rule, which deals with the superimposition of signal circuits, the provision appears to be missing some key words. In other Scope Rules, that same provision merely points out that when signal circuits are superimposed with other circuits, scope coverage only extends up to the point where superimposition begins. See Public Law Board No. 5622, Award 51. During the installation work in dispute here, signal circuits were never superimposed with other circuits. Thus, on its face, subparagraph (c) would not appear to have any application to the instant controversy.

Turning to the main body of the Scope Rule itself, we see that it names a large number of different devices and/or their internal components. It is clear, however, that the focus of the Scope Rule is on the trackside equipment and devices that are specifically named. Consistent with the contract language interpretation doctrine of eiusdem generis, the overall extent of the Scope Rule should be held to the kind of

devices and equipment specifically mentioned. As written, the Scope Rule text does not explicitly mention radio equipment. For example, nowhere does the Scope Rule text include words such as, “radio equipment to be used in the transmission of signal data.” In stark contrast, however, is the text of the IBEW Classification of Work Rule, which specifically references the installation of “. . . radio . . . microwave and data transmission equipment . . .” in addition to work generally recognized as the work of Communications employees. Accordingly, we must find that the BRS Scope Rule, as a result of the specific devices and equipment named in it, does not explicitly extend to the installation work that is the substance of the instant dispute. If scope coverage is to be established, therefore, it must be via one or both of the remaining means of doing so.

The BRS Scope Rule contains this phrase: “together with all appurtenances pertaining to the above-named systems and devices. . . .” No bargaining history is in the record to prove that the word “appurtenances” was to have a more expansive meaning than its normal and customary meaning. In normal or customary parlance, an “appurtenance” is something that is presently subordinate to another more important thing. For example, the screws, nuts, washers, and bolts that hold some kind of apparatus together would be considered to be appurtenances of the overall apparatus. In this case, however, it is important to remember just what work is in dispute as well as when it was being performed. At the time the satellite equipment was initially installed at each location, the location was still operating with the two-wire means of transmitting signal data. Therefore, at the time of its initial installation by IBEW-represented employees, the satellite equipment was not connected to the existing signal system, nor was it carrying live signal data. Accordingly, the equipment was not appurtenant to anything while IBEW-represented employees conducted their portion of the overall installation. Once the satellite communication link was completed and tested, the remainder of the installation work was turned over to Signalmen. Then, and only then, was the IDU connected to the WCM by a Signaller and subjected to further testing specific to the signal system. Given these considerations, we must find that there is no proper basis for finding that the disputed work was covered by the BRS Scope Rule because of the “appurtenance” clause.

The remaining avenue for establishing scope coverage is by demonstrating that the disputed work was work that was “. . . recognized as signal work” as that

clause appears in the BRS Scope Rule. For this avenue, the past practice of the parties is determinative.

Although distinctly different in terms of technology, the past installation work involving the BCP/MCP radios was effectively identical in terms of function and installation. The BCP/MCP equipment provided a link using radio technology to span the distance between the Carrier's centralized dispatching facility and trackside train control equipment so that the existing two-wire technology could be replaced. That is exactly what the satellite equipment does at the locations in question. In all cases, the satellite link replaced the existing wire link.

In the six individual claims filed in this matter, the BRS asserted that BRS-represented employees had performed the initial installation of the BCP/MCP radio equipment. The Carrier refuted these assertions in its denial of the claims and throughout the further development of the record on the property. When the Organization's assertion was thus refuted, the burden of proof shifted back to the Organization to provide probative evidence to show that Signalmen had performed the work. No such evidence was provided. Although the Organization did provide statements from its members, none of them dealt with the subject of initial installation of the BCP/MCP radio equipment. And although the Carrier did not have the burden of proof on this point, the Carrier nevertheless did provide statements to support its position. The statements established that the initial installation of the BCP/MCP radios was performed by Communication employees and not Signalmen. After the Communication workers had installed the BCP/MCP radio links and tested them, then, and only then, was the link turned over to a Signalman for connection to the Protocol Converter and further signal-specific testing of the radio link. Moreover, the physical presence of the MCP radio and antenna upon and within the signal bungalow is so prominent that Signalmen could not have credibly failed to notice the installation. Accordingly, if the BRS took exception to such initial installation work, we would have expected to be provided evidence of past claims to challenge the propriety of the work assignment. No such evidence was made part of the record. Therefore, on the record before us, we must find that the initial installation of either the BCP/MCP or the satellite radio links, up to the point in time when the link was turned over to a Signalman for further implementation and testing, was not recognized as signal work.

Given the foregoing discussion, we must find that the work in question was not covered by the BRS Scope Rule. Therefore, the BRS has not satisfied its burden to prove that the BRS Agreement was violated as alleged in the instant claims. Accordingly, they must be denied.

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 14th day of May 2010.

Brotherhood of Railroad Signalman's Dissent to

Third Division Award 40482

Referee Gerald E. Wallin

The Organization firmly believes the findings of the aforementioned Award are beyond irrationality and future Railway Labor Act (RLA) arbitration boards should disregard this Award.

The claims in this dispute arose when the Carrier violated the Brotherhood of Railroad Signalmen (BRS) Seaboard Coast Line Scope Rule, when it allowed IBEW-represented employees to perform the initial work of installing new equipment to transmit signal data by radio wave using satellite communication technology. The record demonstrated that all of the locations in question where the disputed work was performed were locations that still utilized the older two-wire code system that carried only signal data between the dispatching center and field control stations to operate Carrier's signal system. In fact, the Referee stated in his findings ***"The satellite link was installed to replace the wire system. As with the BCP/MCP radios, the Carrier does not dispute that the new technology, once connected to the signal system, would carry only signal data."***

In 1999, on Public Law Board No. 5622 Award No. 51, which involved the installation of antenna towers and data radio equipment for the signal system, Referee Wallin held that when Carrier began implementing radio technology to carry signal data over leased telephone lines to field locations where Base Communication Package (BCP) radios were installed, he sustained the Organization's position that this work was in fact covered by the BRS Scope Rule, as follows:

"The MCP, usually situated at a remote location, such as a signal control point, communicates with the BCP. The BCP passes the

signal to the microwave system which, in turn, communicates with Carrier's dispatch facilities. The BCP and MCP components can carry several discrete channels of communication. Each MCP also has three 'client ports' that can be used to connect to the various detection and signalling (sic) devices that make up the signal system. With an MCP at a control point, therefore, the signal information that was formerly carried by the hardwired code line is now input to one of the MCP client ports where it is processed and passed to the antenna for transmission to the BCP using the radio technology. It is undisputed that the MCP/BCP equipment can simultaneously transmit signal data as well as other communication information, such as voice and teletype.

In its initial denial of the Claim, Carrier asserted that the radio equipment was a "... common communication medium ..." not covered under the BRS Scope Rule. As the record developed on the property, however, it became clear that the nine antennas and associated radio equipment replaced hardwired signal code line over the territory in question. Despite the capability of the equipment to simultaneously carry other forms of communication, it has only carried signal information. At the hearing held in May of 1999, the parties stipulated that the equipment is still not carrying any other form of communication.

Given the foregoing facts demonstrated by the record, the Board finds that the BRS has established a *prima facie* case of scope coverage. In our view, the BRS Scope Rule is clear and unambiguous regarding its coverage in this matter.

The Board has also examined the IBEW scope provisions and finds them to be consistent with the foregoing analysis. The IBEW Scope Rule provides that the 'Existing division of work between electrical workers and signal employees will continue.' In keeping with the common terminal concept expressed in the BRS Scope Rule, communication work falls outside of the BRS Scope Rule whenever there is at least one other form of communication simultaneously carried with signal data. On this record, the Board finds that common terminal point to mark the existing jurisdictional division of work between the two crafts.

Given the foregoing discussion, the Board finds that the disputed work fell within the coverage of the BRS Scope Rule. The key to this finding is the fact that the use of the radio equipment was limited to serving exclusively as signal circuitry. Accordingly, the

Carrier is found to have violated the BRS Agreement by assigning the work to others.” (Emphasis added)

Public Law Board 6525 - Case No. 71 (Referee M. David Vaughn) is a similar case concerning MCP data radios installed to replace the former pole-line-based code system that transmitted and received signal controls and indications from the train dispatcher control center on this same property (CSX). This Board utilized the argument provided in Public Law Board No. 5622 Award No. 51 above, in supporting its position that this work is covered under the Scope rule as follows:

“It is undisputed that, as required under the provisions of the Signalmens’ Scope Rule, paragraph (a), Signalmen exclusively performed all maintenance work associated with the former pole line control circuits, which the data radios (MCPs) replaced, including installing and replacing them. The record indicates that such equipment is used to transmit and receive information for the operation of the signal system to control the movement of trains. The equipment transmits control codes, which are received at the field locations and then used to initiate various signal functions in the centralized traffic control system. The record provides no indication that there was any communication equipment operated through this equipment, or that there were any vital functions other than the signal operations controlled through this equipment.

The evidentiary record also establishes that the change in technology, from pole line control circuits to MCPs, affected only signal work. The data radios now used in the signal system perform only signal system functions, acting as the link that allows the train dispatcher to control the signals from the control panel at a remote location. The radios are not used for and, as configured, are not capable of performing any communication functions and they do not take the place of equipment that performed communication functions. Furthermore, when employees make changes to any part of the signal system, tests must be made to ensure the integrity of the entire signal system. Communication employees are not trained to perform those tests of the signal system.

Under IBEW Rule I (a), Communications work includes installing and removing “communication [and] communication plant equipment, including radio, fiber optic, microwave and *data transmission equipment* and all other work *generally recognized as*

work of Communication Employees.” (Emphases added.) Typically, such equipment is used to handle wireless voice communication. Neither the pole lines which the data radios replaced nor the data radios themselves constitute such work. Defective MCPs are now sent to a repair shop in Louisville, Kentucky, where Communication employees perform all repairs of defective radios.

The evidence establishes that MCP units can carry several discrete channels of communication simultaneously and can serve multiple purposes, depending upon where they are located within the Carrier’s operations. Some are used exclusively to perform communication functions, some are used exclusively to perform signal functions, and some are used to perform both simultaneously. In accordance with paragraph (d) of the BRS Scope Rule, when signal circuits are superimposed on systems not covered by BRS employees, they still install and maintain the signal work that has been superimposed on the non-covered system.

Although the MCP at issue in this case is surrounded by systems covered by Communications employees, the evidentiary record shows conclusively that the MCP is an essential part of the signal system, that its only function was to transmit signal code information and that it served no communication function. The Carrier emphasized that the disputed MCP is exclusively used for transmittal of control circuit signals. The Board concludes that the disputed work, therefore, falls within the coverage of the BRS Scope Rule. Although removing and installing MCPs is not specifically listed in the Scope Rule, such work is a part of the interlocking signal system, is generally recognized as signal work and clearly falls within the meaning of paragraphs (a) and (d).”

The key to the Board’s finding in the quoted case that the disputed work fell within the coverage of the BRS Scope Rule was the fact that the use of the radio equipment, like in the instant case, was limited to serving exclusively as signal circuitry.

The Carrier contends that these two Awards that favor Signal employees, when combined with the series of cases that favor Communication employees, indicate a divergence of opinion concerning which craft has exclusive jurisdiction over the work at issue. The Board is not persuaded by Carrier’s conclusion that the disputed work should be considered shared work not exclusive to any particular craft. The series of cases favoring IBEW are all based, as previously discussed, upon Second Division Award No.

7774 which involved "wireless voice communication equipment" and the subsequent actions of the Carrier which adopted procedures to implement these suspect awards. The Board concludes that those awards do not constitute appropriate precedent for the nonexclusivity on which it seeks to rely." **(Emphasis added)**

Both of the Referees' findings in the above quoted cases established that the disputed work fell within the coverage of the BRS Scope Rule, due to the fact that the use of the radio equipment, like the satellite technology in the instant case, was limited to serving exclusively as signal circuitry. This Referee's statement that even his own previous decision, as well as others on this issue, should have little precedent value in the instant case, is disingenuous at best and cannot be allowed to set precedent on this issue.

In the instant case, the Referee reversed his previously sound position that whenever new technology is used to replace the old two-wire code line system for the exclusive use of providing transmission and reception of signal data, the work was BRS Scope-covered work. The only difference between satellite equipment and that of the BCP/MCP radio equipment addressed in his previous Award is that the satellite equipment sends its information through the air, whereas BCP/MCP used leased telephone lines. Both simply replaced outdated hardwire code line. In both cases, the sole purpose of this equipment is the transmission and reception of vital control and indication information of signal data used solely for the operation of the signal system. Therefore, the work of installing, testing, and maintaining these systems accrue to Signalmen, as noticeably stated in the above Awards.

The Referee, in an effort to support his new and obviously flawed position concerning satellite technology, tried to dissect the Scope Rule and the language in Appendix 9, to arbitrarily attempt to establish that the equipment in question was not Scope-covered work or an appurtenance to the signal system for train stop and train control systems. However, the Scope Rule explicitly states in the

last sentence of Section (a), "...together with all appurtenances pertaining to the above-named systems and devices, as well as any other work recognized as signal work." Appendix 9 states in pertinent part, *"The Parties signatory to this letter of understanding agree that Systems and devices covered by the Scope rule are to be installed, modified, maintained and repaired by the Employees covered by the Signalmen's Agreement. It is, also, recognized, particularly in the case of new systems and devices... The installation, wiring and apparatus modification will be done by employees under the Signalmen's Agreement under the instructions and supervision of such Technicians and/or Engineers."* **(Emphasis added)**

The above language clearly establishes that the parties recognized that new technological changes to the signal system were forthcoming and would continue to evolve over time, particularly in the case of new systems and devices. However, the language clearly reserves the work for signalmen. An example of a technological change to controlling signal devices in the field from the dispatching centers was initially the installation of BCP/MCP radios, and, later on, an additional example is the satellite based communication technology to replace the existing code/wire link.

The problem in accepting the Referee's theory that since the satellite equipment was not connected to the existing signal system or carrying live signal data when it was installed somehow made this equipment "not appurtenant to anything" is that all new signal installations, or modifications to existing signal systems, are done without being connected to "live" or "active signal systems". Under the Referee's argument, the Scope Rule would be decimated, since so much of BRS work is done without being "connected" to the existing signal system. This is tantamount to, and has the putative effect of, removing all future installation or modification work on Carrier's signal system from the Scope of the BRS Agreement. The Referee's argument is simply not sustainable.

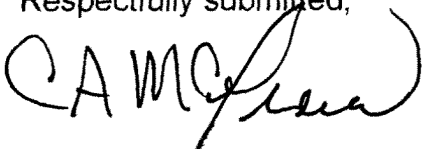
During what is normally defined or referred to as a signal “cutover”, all of the older systems and appurtenances being replaced are disconnected, and the previously installed newer technology and appurtenances are connected in their place, tested, and placed in service by Signalmen. A reasonable mind can only conclude that the Referee unmistakably erred when he ruled, “...*we must find there is no proper basis for finding that the disputed work was covered by the BRS Scope Rule because of the appurtenance clause.*” as long as the equipment was not connected to the existing signal system or carrying live data.

Here, the Board uses the word “appurtenance” as if to denote some kind of order, i.e., first control, then signaling equipment, then indication. The signal data transmission system is an integral part of the overall signal system or body. The Board’s very narrow definition tries to make the argument that controls or indications could stand alone, when in fact the ultimate goal is to display a signal, throw a switch, indicate track occupancy, etc., and then indicate that the controls from the dispatching center have been acted upon successfully. The time that the equipment was installed is irrelevant to the issue at hand because the record is clear that this technology is an appurtenance, or ancillary part of the signal system. If the Referee’s decision is adopted, it would have the effect of removing all installation work guaranteed by the Agreement, which accrues to Signalmen.

In addition to the above, this Referee, over the objections of the Organization, allowed Carrier to present prohibited new evidence at this arbitration hearing during the Carrier’s hour-long presentation of its case. The Organization was then advised that it had 30 seconds for rebuttal comments. The Organization is confident that the handout provided by the Carrier is a BCP/MCP smokescreen, and that the Referee’s findings certainly followed the handout inserted by the Carrier after the on-property record was closed.

This extreme overreaching by the Board resulted in a failure to interpret the applicable CBA and prior Awards, and had the purpose and effect of amending the applicable CBA. The Board does not have jurisdiction to amend CBAs, therefore, this Award is clearly without merit. Accordingly, this Award should be ignored by any future RLA Boards.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. A. McGraw', written over a horizontal line.

C. A. McGraw
International Vice President BRS
Labor Member, NRAB