Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40907
Docket No. SG-40494
11-3-NRAB-00003-080189

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway of Chicago:

Claim on behalf of T. A. Bogard, E. K. Darby, M. S. Golich, K. D. Hall, J. P. Hansen, C. S. Harwell, W. F. Helmbold, C. J. Jacob, J. W. Jane, C. J. Jonas, P. Kapolka, D. J. Lawler, R. A. Long, J. A. McNeill, W. V. Monken, W. R. Murphy, R. W. Newcomb, Jr., J. M. O'Brien, T. M. O'Connell, J. R. Peters, A. J. Przewoznik, D. E. Quinlan, T. J. Quinn, P. J. Rizzo, R. H. Rogers, R. C. Russin, B. Tinsman, M. A. Todd, T. E. Vacherlon and R. J. Wanda, who are all active employes listed on the 2006 BRC seniority roster, for 13 and one-half hours each at their respective time and one-half rates of pay or the opportunity to work thirteen and one-half hours overtime, account Carrier violated the current Signalmen's Agreement, particularly the Agreement between the Belt Railway of Chicago and the Brotherhood of Railroad Signalmen effective July 1, 2005, when it utilized contractor employees for nine and one half hours on July 19, 20, 24, 25, 26, 27, 2006 and August 2, 9, 10, 2006 and denied the Claimants the opportunity to work these additional 13 and one-half hours or for payment of these hours at their time and one-half rates of pay. Carrier's File No. 07BRSA-001. General Chairman's File No. 06-26-BRC. BRS File Case No. 13943-BELT."

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.

By means of a Special Agreement dated July 1, 2005, the parties set aside their dispute over scope coverage of certain work and explicitly permitted the use of contractor forces to install new airlines on the east and west sides of its hump tower located at the Carrier's Clearing Yard in Bedford Park, Illinois. In return, the Organization's members received a lump sum payment, a no-layoff guarantee, and the right to either work or be paid for certain overtime work performed by the contractor crews.

The two airlines were each approximately 6,300 feet in length. The west side airline was installed during 2005. The east side airline was installed in 2006. The instant claim arose during the 2006 installation.

According to the record, the contractor crews normally worked from 6:00 A.M. to 2:30 P.M. Whenever the contractor crews worked longer hours on the actual installation work, then the Organization's members either worked or were paid for a corresponding number of overtime hours. That much is not in dispute.

What is in dispute is the time spent by contractor forces after 2:30 P.M. on nine dates in July and August 2006 when they performed so-called "prep work." This prep work lasted one and one-half hours on each of the nine dates. It occurred in the contractor's meeting area, which was on Carrier property but away from the installation work area, and consisted of maintenance work on contractor machines

and equipment, some welding of ends on piping for the airlines to be installed on subsequent work days, and general cleanup of the contractor's assigned meeting area. The parties disagree over whether this prep work fell within the scope of the July 1, 2005, Special Agreement. The Organization does not contend that the prep work fell within the Scope Rule of their main Agreement.

After careful review of the record developed by the parties on the property, we must reject the Organization's claim for the following three substantive reasons. First, the Special Agreement consists of preamble language and 12 paragraphs. These provisions make several references to the type of work covered by the Special Agreement. The descriptive terms used are "installation" as well as "airline installation work" and "install or replace." Nowhere does the Special Agreement use more expansive terminology like ". . . all work associated with the installation of . . ." or similar all-encompassing text.

Second, the fourth paragraph requires that two Organization members be ". . . assigned to work with each crew utilized by the contractor for the work described above. These signalmen will be entitled to any overtime worked by the crews to which they are assigned. . . ." As written, this text suggests that the overtime entitlement arises only when an entire contractor crew is engaged in installation work. It is unrefuted in the record, however, that only some of the contractor forces stayed over to perform prep work after 2:30 P.M. on the dates in question. This point is made in the Carrier's denial letter of January 3, 2007.

Third, it is undisputed that the instant claim arose during the second year of operation of the Special Agreement. The record does not establish that any similar claim arose during 2005 when the west side installation was performed. According to the Carrier's October 24, 2006, denial of the claim, the Special Agreement was applied the same way during 2005 as it was during 2006. We note also that paragraph eight of the Special Agreement gave the Organization the ability to raise concerns about the 2005 work before the 2006 phase of work would begin. On the record before the Board, there is no evidence that there were any disputes about the performance of so-called "prep work" in 2005. This strongly suggests that any 2005 prep work was not viewed to be within the scope of the Special Agreement.

Given the foregoing factors, we must find that the Organization has not sustained its burden of proof to support the claim on its merits.

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 10th day of March 2011.