

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42235
Docket No. SG-42306
16-3-NRAB-00003-130311

The Third Division consisted of the regular members and in addition Referee Sidney Moreland 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 Railroad:

Claim on behalf of K. P. Guss and S. A. Stapelton, for each to receive 40 hours at their respective straight time rate of pay and three hours at their respective overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 65, when from April 30, 2012, through May 4, 2012, it permitted IBEW represented employees on the Mina Subdivision to perform electrical work exclusively reserved to the Claimant by the Scope of the BRS Collective Bargaining Agreement, which caused the Claimants loss of work opportunities. Carrier’s File No. 1570682. General Chairman’s File No. UPGCW-12-1788. BRS File Case No. 14921-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.

As Third Party in Interest, the International Brotherhood of Electrical Workers (IBEW) was advised of the pendency of this dispute and chose to file an Ex Parte Submission with the Board.

This is a dispute concerning the jurisdiction of assigned work by the Carrier, or rather, the scope of work parameters of employees in the Signal Department as governed by an Agreement between the Parties, containing a provision known as the "Scope Rule," which states, in pertinent part:

"This agreement governs the rate of pay, hours of service and working conditions of employees in the Signal Department who construct, install, test inspect, maintain or repair the following:

1 . . . (e) highway crossing warning systems and devices"

Also applicable to the matter at hand, the Agreement contains a provision known as Rule 65 - LOSS OF EARNINGS. Rule 65 states, in pertinent part:

"An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss"

The Claimants were assigned members of the Signal Department and the BRS contends that two IBEW-represented Electricians built meter service and breaker boxes for commercial power and then installed it. The Electricians also installed two transformers and appliances (arrestors and grounds); dug a trench; laid power cable in it; buried it for 9/10ths of a mile; and connected it on both ends from the meter to the signal case. The Organization complains that said work is reserved to BRS-represented employees; the Carrier violated the Scope Rule and Rule 65; and as a result, the Claimants are now owed 40 hours of straight time and three hours of overtime.

The Carrier denied the Organization's claim, averring that the BRS, as the moving Party, failed to meet its burden of proof by failing to provide any documentation or evidence of its allegations, nor that said work was exclusively reserved to the Claimants. The Carrier's Manager provided information concluding that there is a historical practice of IBEW-represented Electricians

performing the disputed work upon this territory, including making connections in the signal cabin and performing ditch work. The Carrier asserts that its assignment of the work to IBEW-represented employees is proper, because the general nature of the Parties' Scope Rule does not exclusively reserve said work to the Organization's members.

The Third Party IBEW, for its part, asserted that the disputed work not only is identified in its Agreement with the Carrier, but also has historically been performed by IBEW Utility Electricians, as demonstrated by statements from IBEW-represented Electricians to that effect.

The record evidence reflects that the BRS notified the Carrier while the work in question was being performed by IBEW-represented employees; gave specific identification and description of the work; and requested the work be assigned to BRS-represented employees. The BRS, in addition to demonstrating conclusively that the work occurred, has also shown that its members have historically performed such work. Most notably, the BRS points to the General Chairman's statements of having originally installed and maintained the signals and power in question in the mid-1970's. The evidence showed that BRS-represented employees constructed the original power to the signals via overhead power lines and poles. The work complained of consists of relocating the power underground on the same signal devices, and falls under the "construct, install, maintain" of "highway crossing warning systems and devices" language of the Scope Rule, supra.

However, the record evidence also reflects that the Carrier has also assigned the type of work described herein, on this territory, to IBEW-represented employees in past instances and not just to BRS-represented employees to the exclusion of all others. Specifically, the Carrier submitted evidence of IBEW-represented employees performing the ditching work involved in relocating power underground and making the connections. The Carrier referred the Board to language from a similar case – Third Division Award 13683 - wherein non-exclusivity by either Union was found:

"At most, there is a mixed practice concerning the assignment of this kind of work in that the Carrier has assigned this work to employees represented by the Organization (IBEW) and the BRS."

More pointedly, Public Law Board No. 2766, Award 206 resolved another very similar dispute involving power installation work for crossing signals such as

the matter before us. Ironically, the IBEW represented the claimants in that case t who complained of the work being assigned to BRS-represented employees, which the Carrier defended. The Award concluded,

“ . . . primary power installation is done by both IBEW and BRS employees. The record supports the notion that if the power obtained is to be used for the operation of the Signal System, Signalmen are assigned the work of installing the power drops. That point went unrefuted throughout the proceedings in this matter. Carrier did not violate the IBEW Agreement by assigning signalmen to install power drops to new signal locations.”

What the record evidence and the cited precedent before the Board shows is the non-exclusivity of this work by either the BRS or the intervening IBEW. By utilizing the members of both Unions to perform the disputed work, the Carrier has created a history of non-exclusivity, circumventing either Union to assert any jurisdictional exclusive right to the work and prevail. Accordingly, the instant claim 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 29th day of January 2016.