

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42236
Docket No. SG-42363
16-3-NRAB-00003-130383**

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 R. Hutchins, D. W. Swanson, and S. Romness for seven hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 4, and 65, when it utilized contractors instead of the Claimants, on the Mankato Subdivision at mile pole 18.39 to bore in signal cables, thereby causing the Claimants a loss of work opportunity. Carrier’s File No. 1574088. General Chairman’s File No. N 1 1096. BRS File Case No. 14887-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.

The matter before the Board involves the Carrier's use of a contractor to bore in pipes - by horizontal directional drilling - used to house signal cable to be installed subsequently by the Claimants. The Organization contends that the Claimants are well trained and qualified to perform this work and that said work is reserved exclusively to them pursuant to the Scope Rule and Rule 4 of the Agreement between the Parties. The Claimants further contend that they are due compensation for the violation pursuant to Rule 65 governing any loss of earnings suffered as a result of a violation of the Agreement. The cited Rules, read, in pertinent part, as follows:

"SCOPE RULE . . . 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 . . ."

"Rule 4 - EARTH BORING MACHINES

When earth boring machine is used in signal department work, the following minimum force will be used:

**One signalman
Two assistant signalmen
Or two assistant signalman candidates."**

"RULE 65 - LOSS OF EARNINGS . . . 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 three Claimants were assigned members of Construction Seniority District 5 and the Organization contends that the Carrier allowed an outside contractor to directionally bore in pipes for housing signal cable.

The Carrier denied the Organization's claim and cited 116 occasions in which a contractor had performed boring work since 1997 without protest by the Organization. The Carrier further asserts that the contractor installed no signal cables or wires; that the Organization has not and cannot demonstrate a system-

wide past practice that said work was exclusively reserved to BRS-represented employees; and that Rule 4 is a manning Rule, which merely specifies the number of employees to be utilized when boring is performed and provides no exclusivity to the Claimants.

The Organization concedes that boring is not exclusively reserved to the Claimants when that method is utilized in order to install conduit or pipe used to contain circuitry; when used to install conduits, pipes, casings, drain pipes, utility vaults, man holes, culverts, shafts, or any other part of a structure; or when used to drill a well, build/repair a bridge, or for environmental services. However, the Organization avers that Rule 4 does not exempt any type of earth boring machine, and while Rule 4 addresses the minimum number of employees, it also states that the Carrier must use employees covered by the Agreement if an earth-boring machine is utilized in the performance of Signal Department work, regardless of the type of boring tool used or the installation method.

The Board has previously found this work to have an established history of a mixed practice of performance by both Carrier employees and contractors (Third Division Award 41630); and that boring work is not reserved to the class and craft of Signalmen (Third Division Award 40421).

A review of the record evidence and arguments presented reveals that the Organization has not demonstrated that the Scope Rule of the Parties' Agreement specifically reserves the directional boring work in question. 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.