

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43029
Docket No. SG-43832
18-3-NRAB-00003-160640**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Idaho & Sedalia Transportation Company, LLC**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Idaho & Sedalia:

Claim on behalf of M.K. Harrison and K.M. Sanders for 3.5 hours each at the Shop Tech rate of pay, 30 minutes per set of two signs for 14 total signs, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, and Rule 58, when from September 28, 2015, through October 25, 2015, it utilized an outside contractor to manufacture site specific Highway Grade Crossing Emergency Signs. Carrier, in permitting an outside contractor to perform this work, violated the parties’ Agreement and caused the Claimants a loss of work opportunity. Carrier’s File No. 54. General Chairman’s File No. S-SR, 58-1528. BRS File Case No. 15481-I&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.

The Carrier owns and operates what was formerly the Union Pacific Railroad's Sedalia Signal Shop. Work performed by employees covered by the Agreement at this shop consists of wiring of signal cases, houses and bungalows that the Carrier ships to its customer railroads, which then perform the installation.

Pursuant to Section 205 of the 2008 Rail Safety Improvement Act, the Federal Railroad Administration (FRA) has required railroads to establish Emergency Notification Systems (ENS), which involve the installation of signs with toll-free phone numbers at grade crossings to enable the public to report unsafe situations. The Carrier's customer railroads then requested the Carrier to provide these signs along with signal cases, houses and bungalows it was shipping to them. The Carrier, consequently, contracted with a third party vendor to produce signs with toll-free phone numbers printed on them, and a space in which an adhesive sticker could be added that would contain site-specific information. The vendor printed and applied the stickers based upon information provided by the Carrier's customers and, in turn, given to the vendor by the Carrier. When the signs were delivered to the Carrier, its employees placed the signs with the equipment it was shipping to its customers. The signs were then installed by the customers' employees.

According to the Carrier, it started to order these signs in August 2014, and the first shipment arrived at the Sedalia Shop in mid-September 2014. It asserts that more than 200 signs were purchased from the vendor before the Organization filed the instant claim on October 27, 2015.

The Organization argues this work is reserved to its members through past practice and 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 Idaho & Sedalia Transportation Company, LLC Signal Shop who construct, test, inspect, or repair the following:

...

1.

(e) Highway crossing warning systems and devices

. . .

- (1) New technologies used in connection with any signal system.

. . .

- (6) Sign making used in connection with any of the signal devices listed in this Scope Rule.”

The Carrier has cited two Third Division Awards involving this Organization that we find to be on point. In the first, Award 23481 (LaRocco) with the Fort Worth and Denver Railway Company, we wrote:

“The signs in dispute are designed to warn and inform oncoming motorists concerning the number of tracks at a railroad crossing or to indicate to the motorist that he is at a grade crossing. The issue is whether these particular signs are appurtenances to highway railroad grade crossing protection systems within the meaning of subparts (A) and (C) of Rule 1.

. . .

“To demonstrate that the signs are appurtenances specifically covered by Rule 1, the Organization must prove that the signs are an integral part of or essential to the Carrier’s highway grade crossing protection system. Third Division Award No. 11973 (Kane); No. 13857 (Mesigh); No. 19251 (Devine) and No. 22705 (Kasher). We rule that the Organization has not met its burden of proof in this case. The signs which are mostly informational in nature are not substantially related to the highway protection system or to the approach or presence of a train. Thus, the disputed work was not exclusively reserved to the signal employees on this property.”

Award 23481 was relied upon as the basis for denying the Organization's claim in Award 35039 (Richter), involving CSX Transportation, Inc. There, the Board found:

"The record reveals that in 1997 the Carrier began a program of positioning signs at grade crossings giving the phone number of the Carrier's dispatchers. The signs alerted the public to call if a hazardous situation occurred at the crossing, such as a stalled truck on the tracks. The outside contractor fabricated and installed the signs. The signs were attached to grade crossing equipment at crossings where such equipment was located. Where no crossing equipment existed the sign was installed as a stand alone sign. This claim only pertains to the signs attached to grade crossing equipment such as gates or flashing signals.

One thing that is clear is that the signs do not activate any signal equipment, nor are there any wires connected to the signs."

In the case before us, we similarly find that the signs in question are not used in connection with any signal devices. As were the signs in Award 35039, they are a request to the general public to inform the railroad if there are problems at the crossing. These problems might be malfunctioning crossing protection, but might also involve motor vehicle accidents at the crossing, or anything else that might interfere with trains, vehicles or pedestrians using the crossing. Although a railroad might post one of these signs on a signal bungalow, the FRA has made it clear that such a posting would not be in compliance with its regulations. We find, therefore, that the manufacture of these signs is not covered by the Scope Rule, and that the Organization has not met its burden of proof that the work involved is reserved to its members on this property.

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 29th day of March 2018.