

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43151
Docket No. SG-43412
18-3-NRAB-00003-160050**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 D.M. Castle, M.L. Dorman, M.S. Jones, T.W. Lewis, J.D. Moyers, T.L. Murphy, K. Ohland, D. Parker, D.K. Shelton, D.R. Smith, N.P. Smith, S.R. Sparks, D.J. Thompson, J.M. Waddle, P.A. Willingham and M.A. Wiltbank, for 44.5 hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when, on July 29 through August 5, 2014, Carrier permitted contractors to build pads and retaining walls for signal houses and signals at various locations near Ozark, Ar., on its Van Buren Subdivision, and thereby caused the Claimants a loss of work opportunity. Carrier’s File No. 1614011. General Chairman’s File No. S-SR-1403. BRS File Case No. 15219-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 Organization filed the instant claim on the Claimants' behalf, alleging that the Carrier violated the parties' Agreement when it utilized an outside contractor to perform the work of building pads and retaining walls for signal houses and signals at various locations near Ozark, Arkansas, from July 29 through August 5, 2014, thereby denying the Claimants this work opportunity. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work at issue is Scope-covered work, because retaining walls and pads are appurtenances to the signal system in that they keep signal houses and equipment from washing away, because the Claimants possess the skills necessary to perform this work, because the Carrier possesses the equipment necessary to perform this work, because there is no support for the Carrier's assertions, and because the requested remedy is appropriate.

The Carrier contends that the instant claim should be denied in its entirety because the work at issue is not covered by the Scope Rule, because the Organization has failed to show an exclusive and system-wide practice of performing such work, because the work at issue also supports track and telecom services, because the Carrier has established a historic pattern of using other than signal employees for such work, because the Claimants did not suffer any loss, because there is no support for the Organization's position, and because the requested remedy is excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it used an outside contractor to build pads and retaining walls for signal houses and signals at various locations near Ozark, Arkansas. Therefore, this claim must be denied.

Although these pads and retaining walls are related to the signal system, the Organization has failed to show that this work is specifically referred to in the Scope Rule and the Carrier has shown that this work has been performed by multiple crafts and subcontractors in the past. The record makes it clear that there was special equipment that was necessary for this work, as well as the necessity of civil engineers to perform some of the work relating to drainage. The employees that were represented by the Organization did not have the equipment or the expertise required to install the walls. Moreover, the work being performed was not only for the signal system but also there was telecom equipment that was going to be involved at this location. The work was clearly mixed use, and the Organization did not have the sole right to it. There is nothing in the rules that required the Carrier to not use a subcontractor to perform this work.

It is fundamental that the Organization bears the burden of proof in cases of this kind. The Organization has failed to meet that burden in this case and, therefore, the Board has no choice other than to deny the claim.

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 30th day of May 2018.