

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43398
Docket No. SG-43972
19-3-NRAB-00003-170005**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Illinois Central Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of B.J. Brown, C.K. Clough, P.B. Franklin, S.O. Kone, R.D. McHeffey, H.W. McKeehan, J.J. Price, E. Rice, and R.J. Sharon, for Claimants Brown, Clough, Kone, McHeffey, and Sharon, 20 hours each at their current respective rates of pay; and Claimants Franklin, McKeehan, Price and Rice for 40 hours each at their current respective rates of pay; account the Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and past practice, when it utilized Communication Department employees instead of the Claimants to install, terminate, and splice signal cables at the Four Rivers Wye near Paducah, Kentucky, and at Gilman, Illinois, thereby denying the Claimants the opportunity to perform work which is exclusively reserved to them by the Agreement. Carrier’s File No. IC-BRS-2015-00013. General Chairman’s File No. IC-014-015. BRS File Case No. 15499-IC.”

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.

Protecting the scope of work over which a union has jurisdiction is one of the most critical aspects of its role as representative of the members of its bargaining unit. The parameters of that jurisdiction are one of the first topics addressed in collective bargaining. A definition of the scope of work is frequently set forth in a collective bargaining agreement, and the parties' Agreement here is no exception. Rule 1, Scope, states:

“This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department (except supervisory forces above the rank of Inspector, clerical forces and engineering forces) performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling, inspection, testing and maintenance, either in signal shops or in the field, of the following:

- (a) All signals and signaling systems; traffic and C.T.C. control systems; interlocking plants and interlocking systems; train stop and train control equipment and devices, except that on rolling stock; car retarders and car retarder systems; highway crossing warning devices and their appurtenances; low voltage electric switch lamps; metal train order signals; spring switch mechanisms, except when sent to reclamation shops for renewal or scrap; trackside track occupancy indicators; bonding of track pertaining to the systems and devices herein and bonding for static protection (excluding the removal of bonds when jointed rail is being replaced by welded rail).**
- (b) High tension and other lines, overhead or underground; poles, cross arms, wires and fixtures, pertaining thereto; conduit systems, transformers, arresters and distribution panels; inside and outside wires or cables for signal and interlocking purposes.**

- (c) Storage batteries with their chargers; signal switching and switchboard equipment and current generating facilities, compressed air generating equipment, together with pipe lines and appurtenances pertinent thereto.**
- (d) Pipe lines and pipeline connections, cranks, compensators, foundations and supports for the operation of switches or signals.**
- (e) Welding, carpentry, painting, concrete, form, excavating and back filling work, including the operation of machines, used in connection with installing, repairing, or maintaining any system or equipment covered by this agreement, but does not include such work in connection with the erection and maintenance of structural metal cantilever and signal bridges, interlocking towers, or signal shop buildings.**
- (f) Electric type switch heaters connected to or through signal, interlocking or car retarder systems.**
- (g) Underground boring as outlined in the Underground Boring Agreement dated February 1, 2006. (Reference Appendix P)**
- (h) All other work generally recognized as signal work.**
- (i) No employee or person other than those covered by this agreement shall be permitted or required to perform any work covered by this agreement.”**

The Carrier and each of the unions with which it bargains have to determine scopes for the unions that do not conflict with one another. While the language in each agreement the Carrier and the different unions execute may initially seem clear and specific, changes in technology and methods of operation, may over time blur previously distinct spheres of work. This case presents one such example, of a jurisdictional dispute between the Brotherhood of Railroad Signalmen (Organization) and the International Brotherhood of Electrical Workers (IBEW), in that the Organization contends that work performed by members of the IBEW should have been assigned to members of its bargaining unit instead.

The claim arose when, on July 13-17, 2015, the Carrier assigned IBEW-represented employees to install, splice, and terminate fiber optic cables used to upgrade existing signal cables that were originally installed in the 1950s by BRS-represented employees at Four Rivers Wye near Paducah, Kentucky, and at Gilman, Illinois. According to the Organization, the signal cables installed function to interconnect Centralized Traffic Control (CTC) control points, typically at interlocking plants that control multiple power switches and signals at a remote location. The information exchanged through the cables and the interlocking system between each CTC control house is signal information. The cables that were installed by IBEW employees were signal cables that were, and continued to be, used for transmitting signal information. As such, they are covered by the Scope Rule of the BRS Agreement. The Carrier contends that the fiber optic cables were to be used for multiple purposes, not just signal transmission. The cables would be used for communication purposes and Positive Train Control (PTC). The Carrier concludes that this would be no different than the information traveling between communication equipment via modes such as radios waves, telephone wire, etc. which does not fall under the BRS scope. Furthermore, the Carrier argues that the fiber optic cables provide the ability to transmit data, including other than signal data, through modems and communication equipment. The Carrier stated that the cable was terminated into "rugged.com" equipment that belonged to the Communications Department represented by the IBEW and was no different from the IBEW-installed radios that communicate data. The Carrier ultimately argues that the installed fiber optic cable was necessary for the expansion and extension of the overall PTC network in order to allow for remote access of PTC data from a remote site. Accordingly, the work was properly assigned. The Organization rebutted the Carrier's position by pointing out that there are no IBEW-installed radios communicating signal information between CTC control points. Moreover, PTC is not going to be operational for some years, and PTC work in CTC signal houses is work exclusive to BRS-represented employees. The fiber optic cable at issue is serving the same function as the interconnecting signal cables that have performed for 100 years at Gilman, Illinois, transmitting and receiving signal information. The fiber optic cable at Four Rivers Wye performs the same function as the interconnecting signal cables at new CTC control points.

The Organization filed this claim on August 12, 2015. The parties having been unable to resolve the matter during the grievance procedure, it was submitted to the Board for a final and binding decision.

This is a dispute caused by changing technology. In the past, signal cables were capable of transmitting and receiving only signal information, and there was no question that the work was covered by the Scope Rule in the BRS Agreement. The advent of fiber optic technology made possible the transmission of multiple streams of data through a single cable. As it updates and upgrades signal cables at different locations, the Carrier is replacing older single- or limited purpose cables with fiber optic cables. Signal bungalows have long had radios that were considered communications equipment, over which IBEW-represented employees had jurisdiction. Those bungalows that do not have radios have cell modems that accomplish the same function and are also considered communications equipment. The Carrier likens the fiber optic cables to an advanced function of old telephone wire that was maintained by communications forces. BRS-represented employees have not been trained to splice and terminate fiber optic cable, which is a specialized operation. Finally, the fiber optic cables are connected to “rugged.com” equipment (modems), which has always been installed and maintained by communications forces.

While new technology may contribute to conflict about which union has jurisdiction over certain work, some bright lines remain:

—Bungalow radios and cell modems and “rugged.com” equipment are under the jurisdiction of communications forces.

—Signal work and/or equipment in signal houses, inside and appurtenant, are under the jurisdiction of BRS.

—It is not the type of cable but its function that determines which Organization has jurisdiction over it. Without more, the installation and maintenance of fiber optic cable does not automatically belong to one Organization or the other. One must determine what the cable is being used for.

—Moreover, it is the equipment’s current primary use, not some projected future use that determines jurisdiction. The Board must look to existing arbitral precedent to determine the outcome of cases such as this.”

With these principles in mind, the Board turns to the case at hand.

In any case, the Board is limited to deciding the specific claim before it—in this case, the performance of fiber optic cable work at Four Rivers Wye and at Paducah. The record evidence establishes that the original cables in both locations were installed by BRS-represented employees pursuant to the Scope Rule, which states, in part:

“This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department . . . performing *work generally recognized as signal work*, which work shall include the construction, *installation, repair, dismantling*, inspection, testing and *maintenance, either in signal shops* or in the field, of the following:

- (a) *All signals and signaling systems; traffic and C.T.C. control systems; interlocking plants and interlocking systems; . . .*
(Emphasis added.)”

At a first glance, the work in dispute appears to be covered by the Scope Rule. But the Carrier contends that fiber optic cable is different and more appropriate for communication forces to install. However, the simple fact that the cable is fiber optic is not enough to warrant that conclusion. The real question is: what is the purpose of the cables? The Carrier contends that the eventual advent of the PTC system, whose communications will be carried over the fiber optic cable, makes the work more similar to communications forces than BRS-represented forces. The Carrier makes legitimate arguments, but what will happen in the future remains speculative and will need to be dealt with the time comes. The schematics in the record establish that the only data being transmitted between the signal houses at issue was signal data. The work was originally under the jurisdiction of BRS. The cables continue to transmit and receive only signal data. Accordingly, the work continues to fall under the jurisdiction of signal forces.

That said, there is a clear recognition that some of the equipment involved in the case at hand falls under the IBEW scope. However, regarding the installation of the cable and given that current use of the cable was for signal purposes only, the Board must rely on the findings in Third Division Award 37710. Regarding the Organization’s requested remedy, the Board finds that 15 total hours is sufficient for the portion of the work that was found to be improperly assigned by the Carrier. It will be up to the Organization to provide the proper distribution of the total hours to be paid among the various Claimants.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of January 2019.