

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 43436
Docket No. SG-44247
19-3-NRAB-00003-170337

The Third Division consisted of the regular members and in addition Referee Paul Betts 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 L.A. Birdsong, K.W. Hall, J.W. Keeney, J.K. Nau, D.L. Thomas, and R.G. White, for 32 hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Rule 65, when on January 11-12, 20-21, and 25-26, 2016, it permitted contractors from Reinhold Electric Inc., to install a disconnect panel, and cable used for signal system purposes, between the disconnect panel, the power pole, and the slave heater box, at MP CPX124 on the Joliet Subdivision, thereby causing the Claimants a loss of work opportunity . Carrier's File No. 1651598. General Chairman's File No. S-SR, 65-1549. BRS File Case No. 15552-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.

In the instant claim, the Organization alleges that on January 11-12, 20-21, and 25-26, 2016, the Carrier violated the Agreement when it permitted an outside contractor to install a disconnect panel and cable used for signal system purposes, between the disconnect panel, the power pole, and the slave heater box on the Joliet Subdivision, thereby causing the Claimants a loss of work opportunity.

The Organization argues a) the disputed work has historically been performed by those covered under the parties' Agreement, and the Scope Rule exclusively reserved the performance of this work to the Claimants, b) the exclusivity doctrine is not applicable, as the instant case is not a jurisdictional dispute, and c) the Carrier failed to provide any evidence that other crafts or contract forces had ever performed the disputed work.

The Carrier argues a) running commercial AC power from the public utility source to the disconnect panel/breaker box was not scope covered work, b) contract forces have performed the exact work on the property throughout the system, c) the Organization raised the exclusivity doctrine and therefore bears a higher burden of proof in satisfying its claim, d) Signal Department employees performed all scope-covered work, consisting of installation of the control and indication circuits, as well as the cables which leave the control box and connect to the heaters, e) running conduit is not scope-covered work, f) the Claimants were fully employed at the time and suffered no loss, and g) at best, the Organization has created a genuine dispute of fact.

After a thorough review of the record, we find the Organization has met its burden of proof and sustain the claim in part. Although the Carrier suggested in its submission that the contractor in the instant case may have been utilized under the contracting provisions of the IBEW agreement, there was no evidence in the record supporting this assertion. In addition, this case does not contain any assertion that the power drop was to be used for anything other than for signal system purposes (as opposed to a multi-use project benefiting multiple Carrier departments, such as telecommunications and signal systems). There is no dispute here that the outside contractor ran commercial AC power from the power feed to the disconnect panel. There is also no dispute that the contractor installed the disconnect panel. Because the work here was solely for the purpose of the signal department, the Board finds the power drop from the power feed to the disconnect panel and the installation of the disconnect panel, to fall within the Scope Rule. As such, the Board sustains this

portion of the claim. (See Public Law Board No. 2766, Award 206 and Third Division Award 43174).

The parties here present the Board with a genuine dispute of fact concerning the running of signal line out from the disconnect panel to the heater boxes. The Organization argues the contractor ran signal cable from the disconnect panel to the slave heater boxes, while the Carrier maintains signal forces performed said work. The Board is unable to measure the validity of these opposing assertions. As an appellate body, the Board is simply unable to resolve this dispute of fact. As such, the Board dismisses this portion of the claim.

Based upon all the above, the parties are hereby ordered to jointly review Carrier records to identify how many man-hours were utilized by the contractor in running the power drop to the disconnect panel and how many man-hours were utilized to install the disconnect panel. Once determined, the total hours are to be split evenly between the Claimants and to be paid at their regular straight-time rate.

Although the Board may not have repeated every item of documentary evidence or testimony, nor all the arguments presented, we have considered all the relevant evidence, testimony, and arguments presented in rendering this Award.

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 1st day of March 2019.