

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43439
Docket No. SG-44333
19-3-NRAB-00003-170422**

The Third Division consisted of the regular members and in addition Referee Paul Betts 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 S.M. Boyd, J.W. Hopson, Jr., J.C. Lovell, D.E. Lowry, Sr., and M.T. Mitchell, for 20 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 21-22, 2016, and on February 5-6 and 22, 2016, Carrier permitted contractors to install signal cables on the Pine Bluff Subdivision at Mileposts 360.8, 372.5 and 380.1 near Waldo , Arkansas, thereby causing the Claimants a loss of work opportunity. Carrier's File No. 1652936. General Chairman's File No. S-SR, 65-1551. BRS File Case No. 15678-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 the Carrier violated the Agreement when it utilized a contractor on January 21-22, 2016, February 5-6 and 22, 2016, to install signal cables, thereby causing the Claimants a loss of work opportunity.

The Organization argues a) the claimed work has historically been performed by those covered under the Agreement and falls under the Agreement's Scope Rule, b) although the Carrier argues the claimed work has been performed by contractors in the past, the many statements provided by Signal employees show the installation of signal cables has always been performed by Signalmen, c) even if the Carrier has used contractors in the past to perform the claimed work, the Organization was unaware of such, and when the Organization becomes aware, they have filed claims, and d) the contractor was not boring; the contractor was plowing and laying cable that was specifically for the sole use of the signal department.

The Carrier argues a) the trenching of cable is not scope-covered work, b) the Carrier has a historical practice of using contract forces for this type of work, c) the "boring" decisions have application here, d) the Organization failed to satisfy its burden of proof, and e) the Claimants were fully employed and suffered no loss.

After a thorough review of the record, the Board finds the Organization has met its burden of proof. The Carrier violated the Signalmen's Agreement when it assigned an outside contractor to install signal cable on January 21-22, 2016, February 5-6 and 22, 2016. As a result, the claim must be sustained.

The Carrier argued that the instant claim was similar to the cited "boring" cases. The Board respectfully disagrees. The instant claim involved plowing, whereby a cable plow machine automatically fed signal cable into a newly created trench. The cable installed here was for the sole use of the signal department. The Board has previously ruled in the Organization's favor where similar issues were presented. See Third Division Award No. 43174.

Based upon the totality of the discussion above, the Board finds the work performed by the contractor was within the Scope Rule of the Agreement. As such, the Board must sustain the claim.

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

AWARD

Claim sustained.

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.