

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43440
Docket No. SG-44358
19-3-NRAB-00003-170466**

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 D.A. Blankenship, D.W. Blue, D.R. Holman, N.T. Humphries, B.A. Prestidge, L.L. Rogers and F.H. Spindor, for 132.5 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 from January 9-19 and 24-27, 2016, and February 2-6 and 15--23, 2016, Carrier permitted contractors to install AC panels and disconnect panels, and to dig and install signal cables at Davidson Yard in Fort Worth, Texas, thereby causing the Claimants a loss of work opportunity . Carrier's File No. 1652219. General Chairman's File No. S-SR, 65-1550. BRS File Case No. 15658-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 9-19 and 24-27, 2016, and February 2-6 and 15-23, 2016, the Carrier violated the Agreement when it permitted contractors to install AC panels and disconnect panels, and to dig and install signal cables at Division Yard in Fort Worth, Texas, 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 the work to the Claimants, and b) the identified work was performed exclusively for the Signal department, as there was no communication equipment at the location.

The Carrier argues a) the identified work was not performed exclusively for the Signal department and was for a mixed-use project benefiting both the Signal and Telecommunications departments, b) Signal Department employees performed all scope-covered work, c) the Organization raised the exclusivity doctrine and therefore bears a higher burden of proof in satisfying its claim, d) the work occurred during the Claimants' regular assigned hours and did not involve any overtime, and e) the Claimants were fully employed at the time and suffered no loss.

After a thorough review of the record, the Board is faced with a genuine dispute of fact. In the instant case, the Organization argues the identified work was performed exclusively for the Signal department, whereas the Carrier argued the work was a mixed-use project benefiting both the Signal and Telecommunication departments. The Board has held on numerous occasions that where there is a genuine dispute of facts, it falls to the moving party to provide sufficient evidence to convince the Board of its version of events. Here, the evidence provided by the Organization failed to meet that burden. As such, the Board has no choice but to dismiss the claim.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim dismissed.

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 1st day of March 2019.