

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43441
Docket No. SG-44359
19-3-NRAB-00003-170467**

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.L. Corwin, T.W. Douglas, J.D. Ensor, E.A. Foster, T.S. Hevalow, B.M. Hoolihan, J.A. Koll, M.C. Lange, AT. Lawson, T.R. Marler, Z.L. Milligan, Z.J. Sawford, J.P. Thompson, and T.K. Wilborn, for 72 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 February 3-5, 8-13, 15-19, 22-26, and 29, 2016, Carrier permitted contractors to install disconnect panels and signal cables used exclusively to power signal equipment at Neff Yard in Kansas City, Missouri, thereby causing the Claimants a loss of work opportunity. Carrier's File No. 1653669. General Chairman's File No. S-SR, 65-1553. BRS File Case No. 15667-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 February 3-5, 8-13, 15-19, 22-26, and 29, 2016, the Carrier violated the Agreement when it permitted contractors to install disconnect panels and signal cables used exclusively to power signal equipment at Neff Yard in Kansas City, Missouri, 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) the contractor did not install any signal cable, 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.

The Carrier maintains the identified work has historically been performed by multiple crafts, as well as contractors, and is not exclusively reserved to BRS represented employees. The Carrier cited a number of awards to support this position. The Organization argues that because the power source here was solely related to signal use, the work is reserved for BRS represented employees. In support of its position, the Organization cited Public Law Board No. 2766, Award 206. In relevant part, the Award states:

“...primary power installation is done by both IBEW and BRS employes. The record supports the notion that if the power obtained is to be used for the operation of the Signal System, Signalmen are assigned the work of installing the power drops.”

The Board agrees with Referee Denis' rational and reasoning. However, in the instant case, the Board is faced with a genuine dispute of fact. Here, the Organization argues the identified work was performed exclusively for the Signal department, whereas the Carrier argues the work was a mixed-use project benefiting both the Signal and Telecommunications 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 convince the Board that the indicated work was for the sole benefit of signal systems. 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.