Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 43597
Docket No. SG-44357
19-3-NRAB-00003-170468

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalman
(
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (Amtrak):

Claim on behalf of A.M. Elrod, P.O. Elrod, M.L. Garver, H.G. Hanlin, III, J.E. Heller, S. Hogan, C. Keeton, K.M. Miller, and R. Sellers, for all hours worked by contractors to be divided equally among each Claimant at their respective straight-time and overtime rates of pay, starting on November 3, 2015, continuing until the contractors stop performing signal work, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when starting on November 3, 2015, Carrier permitted contractors to perform the Scope covered work of replacing existing signal equipment with new signal equipment near Porter, Indiana, thereby causing the Claimants a loss of work opportunity. Carrier's File No. BRS-SD-1196. General Chairman's File No. AEGC-16-102-2. BRS File Case No. 15593-NRPC(S)."

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.

On December 2, 2015, the Organization filed a claim asserting that the Carrier violated Rule 1 - Scope of the Controlling Agreement when on November 3, 2015, it permitted third party contractors to replace existing equipment and install signal bungalows, cables, signals and fiber optic lines at various locations near Porter, Indiana. The on-property record of the denials of the claim and subsequent appeals by the Organization indicates that the final written decision by the Carrier was on July 13, 2016. The Carrier denied the claim asserting that the Organization did not meet its burden of proof that the Controlling Agreement, or a binding past practice, prohibited the contracting-out of the work in dispute. The Organization rejected the Carrier's decision and filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

Relevant Contract Language

"**RULE 1 - SCOPE, which in pertinent parts, reads as follows:**

A. The following Scope Rule will apply on the Southern Seniority Districts 1, 2 and 3 as well as on the MBTA Commuter Passenger Railroad:

These Rules, subject to the exceptions hereinafter set forth, shall constitute Agreements between Amtrak and its Communication and Signal Department employees of the classifications herein set forth engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits) including repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and the maintenance of car retarder systems, and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone or signal work represented by the Brotherhood of Railroad Signalmen and shall govern

the hours of service, working conditions and rates of pay of the respective positions and employees of Amtrak, specified in Rule 2 hereof, namely, Electronic Specialists, Electronic Technicians, Inspectors, Assistant Inspectors, Foremen, Assistant Foremen, C&S Maintainers, Maintainers, Signalmen, Assistant Signalmen, Trainees and Helpers.

The employees in the Communication and Signal Department shall continue to install, maintain and repair, and do testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply, (when such compressors, sets or power supply are used wholly or primarily for signal or telegraph and telephone devices, apparatus or lines, and are individually housed in signal or telegraph and telephone facilities) which are part of the signal or telegraph and telephone systems, to the extent that such work is now being performed by employees of the Communication and Signal Department. This paragraph shall not, however, prejudice any rights which such employees may have under the Scope Rule, exclusive of this modification, to claim work performed by other crafts in violation of the Scope Rule.

*** * ***

CONTRACTING OUT[1], which in pertinent parts, reads as follows:

(a) Amtrak may not contract out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak or a rail carrier that provided intercity rail passenger transportation on October 30, 1970, if contracting out results in the layoff of an employee in a bargaining unit."

The Organization argues that a reading of the Scope Rule unambiguously confirms that the work in dispute accrues to the Claimants and that the signalmen's craft has historically performed such work on the Carrier's property. It asserts that the Contracting Out provision in the Agreement is a result of the Amtrak Reformed Accountability Act ("ARAA") of 1997 and does not supersede the Scope Rule, which it claims prohibits the contracting out of covered work. The Organization maintains that

[1] **Added to Agreement December 2, 1997, pursuant 10 Public Law No. 105-134, 'The Amtrak Reform and Accountability Act of 1997.'**

the record developed before the Presidential Emergency Board ("PEB") 242 clearly confirms that the Carrier sought to negotiate the ability to contract out covered work indicating that it did not have the right to do so under the current Agreement.

The Organization cites several awards by this Board where we found that work listed in a scope clause is reserved exclusively to the covered employees unless a clear and unequivocal exception is substantiated. It relies on Public Law Board ("PLB") No. 6671, Award No. 1 (Meyers, 2003) to support its assertion that the impact of the contracting out provision from the ARAA does not supersede the existing language of the Agreement that prohibits the Carrier from using third party contractors to perform covered work. The Organization also contends that there is ample arbitral support for the conclusion that it need not prove that the work is exclusive to the craft when there is a dispute over the contracting out of work to third parties.

The Carrier maintains there is nothing in the Scope Rule that prohibits it from contracting out the work in dispute. It asserts that the Contracting Out provision of the Agreement provides it with the ability to contract out work to third parties when it does not result in layoffs of employees covered by the Agreement.

The Carrier contends that a long-standing practice exits, known as the Labor Clearance Process ("LCP"), wherein it provides notice and meets with the Organization when it decides to contract out work that falls within the Scope Rule. However, the Carrier avers that neither the Agreement nor the LCP requires the Organization's concurrence in order to assign work to third party contractors.

The Carrier argues that the work performed in Porter, Indiana was mandated and funded by the State of Indiana for the Indiana Gateway project. It avers that the work was not performed at Carrier's direction or for its exclusive benefit.

The Board finds that the Organization has not met its burden of proof that the Carrier violated the Agreement or an established past practice when it contracted out the work in Porter, Indiana beginning on November 3, 2015. The Scope Rule does not contain a restriction on the Carrier's ability to contract out work. The Contracting Out provision is the only language in the record that expressly addresses the facts in dispute. There is no evidence that employees covered by the Agreement were furloughed as a result of the contracting out of the signal work.

The documentary evidence confirms that the LCP is an established past practice

between the parties regarding the procedure related to the contracting out of work. The record indicates that in 2009, using the LCP, the Carrier provided notice of its intention to contract out signal work. The parties met and conferred over the proposed third party assignment. The record confirms that the Carrier contracted the work out without concurrence from the Organization. The parties engaged in the same LCP when the Carrier indicated its intent to contract out the work in dispute here. There is no evidence that supports a conclusion that the Carrier must have the Organization's agreement before contracting out work to third parties.

It has been previously held in System Board of Adjustment ("SBA") (Das, April 7, 2017) that the Carrier's decision to contract out work does not violate the Agreement where it conforms to the Contracting Out provision, is made in good faith, and adheres to the historical and customary practice embodied in the LCP. The SBA Award, dated April 7, 2017, determined that the contracting out provision adopted from the ARAA does not override any of the existing provisions of the Agreement that " . . . provide greater or different protections to Signal employees, . . ." The SBA Award found, as we do here, that the Scope Rule, nor any other provision of the Agreement, provides additional protections other than the Contracting Out section imported from the ARAA.

The Organization's reliance on PLB No. 6671, Award No. 1, is misplaced and distinguishable from the facts in the record here. Similar to the findings in the SBA Award of April 7, 2017, we find that the collective bargaining agreement in the dispute addressed by PLB No. 6671, between the Carrier and another organization, contained significantly different language than the one in the record before this Board. Award No. 1 concluded that the contracting out provision implemented as a result of the ARAA did not supersede the existing requirement in the agreement that the Carrier receives concurrence from the Organization before contracting out work that was covered by its scope rule. No such requirement is contained in the Agreement here and therefore, based on the facts contained in the record, there is no conflict between the Contracting Out provision and any other rule or past practice.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Organization has not provided sufficient evidence that the Carrier violated the Agreement or a binding past practice.

AWARD

Claim denied.

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 17th day of May 2019.