

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43881  
Docket No. SG-45408  
20-3-NRAB-00003-190147**

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 A.R. Draffen, R.D. Franks, K.A. Johnson and R.D. Lindsey, for 35 hours each at their respective overtime rate of pay; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 65, when on July 24–28, 2017, and August 24–25, 2017, Carrier permitted contractor Outsen Electric Company to install signal cables used exclusively to power the signal system at CP-I064 located at Milepost 64.41 on the Villa Grove Subdivision, thereby causing the Claimants a loss of work opportunity. Carrier's File No. 1693484. General Chairman's File No. S-SR, 65-1668. BRS File Case No. 15988-UP. NMB Code No. 102.”**

**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.**

The International Brotherhood of Electrical Workers (IBEW), as a Third Party in Interest, was advised by the NRAB of the pendency of this dispute and chose to file an Ex Parte Submission with the Board.

In the instant claim, the Organization alleges that on July 24-28, 2017 and August 24-25, 2017, the Carrier violated the Agreement when it permitted contractors to install signal cables used exclusively to power signal equipment on the Villa Grove Subdivision, thereby causing the Claimants a loss of work opportunity.

The Organization argues a) the claimed work was scope-covered, b) the claimed work was for the sole benefit of the Signal department and only powered signal equipment, c) the Carrier failed to provide any support that the work was for a mixed-use project benefiting multiple departments, d) the exclusivity doctrine does not apply because the claim involves a contractor versus another craft and therefore does not entail a jurisdictional dispute, and e) although the Carrier asserts the disputed work was not scope-covered and maintains others have performed the work, they failed to provide any documentation to support their position.

The Carrier argues a) the contractor installed high voltage transformers and ran commercial power cables to the signal equipment. The contractor did not install any signal cables, b) the commercial power installed by the contractor benefited multiple departments and was not solely intended to benefit the signal department, c) the Claimants did not possess the skills to perform the work, d) the Organization raised the exclusivity doctrine and therefore bears a higher burden of proof in satisfying its claim, and e) the Claimants were fully employed at the time and suffered no loss.

The Third Party IBEW argues that the work at issue here is specifically identified in its Agreement with the Carrier and is the same type of work that has historically been performed by IBEW Electricians.

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.

The Organization argues that the contractor installed a meter pole and 1,200 feet of signal power cable from the meter pole to the signal cabin, and then ran 500 feet of signal power cable in each direction to the end of the Control Point for the OS and two smaller breaker panels for switch heaters. The Organization also argues that the work performed by the contractor was for the sole benefit of the Signal department. The Carrier argues that the contractor installed commercial power and transformers to the location but did not install any signal cables (Manager Ehler's statement). The Carrier also maintains the commercial power installed by the contractor was to benefit multiple departments, including the Telecommunications department.

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 28th day of January 2020.