

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44523
Docket No. SG-45897
21-3-NRAB-00003-200381**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of E.B. Gallo, R.A. Russell, S.J. Savvas, and M. Schmidt, for eighteen (18) hours each, at their respective straight times rate of pay, as well as the \$250.00 lump sum required by the contracting agreement, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when on August 29, and August 30, 2018, it permitted contractors to perform the scope-covered work of removing a Signal Bridge and Cantilevers; resulting in a loss of work opportunity for the Claimants. Carrier's File No. 18-1-IHB. General Chairman's File No. 18-1-IHB. BRS File Case No. 16143-IHB. NMB Code No. 32.”

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 Claimants in the instant case are Foreman Mike Schmidt, Assistant Foreman Eric Gallo, Maintainer Steve Savvas, and Maintainer Robb Russell, who, at the time this dispute arose, were assigned to a Signal Construction Gang headquartered at Dolton.

On April 13, 2018, the Carrier notified the Organization that it intended to subcontract the removal of a retired signal bridge and three retired signal cantilevers. From April 17, 2018, through May 30, 2018, the parties attempted to negotiate mutually agreeable terms for subcontracting but were unable to reach an agreement. On August 29 and 30, 2018, the Carrier used Hulcher Services Inc., an outside contractor, to remove the signal bridge and three signal cantilevers. Each of the three subcontracting employees worked a total of twenty-one hours.

The Organization presented a claim on behalf of the Claimants which was denied by the Carrier. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Organization contends that the Carrier acknowledged that the work performed by outside contractors was scope-covered work, specifically reserved to the Claimants. The Organization contends that the parties have an established practice of discussing the Carrier's desire to use outside contractors to perform signal work. The Organization contends that the Carrier violates the Agreement when it assigns outside contractors to perform scope-covered work without reaching agreement with the Organization.

The Carrier contends that it had a good faith reason for contracting out the work to remove the retired bridge and cantilevers, as it was done for the safety of its employees. The Carrier contends that it made a good faith effort to reach agreement prior to the contracting out of the work, but when the parties' negotiations reached an impasse, it moved forward.

The Carrier contends that the Organization's claimed remedy is excessive, as it is based on a prior subcontracting agreement that has expired and is not applicable to this circumstance. The Carrier contends that it provided documentation that the three subcontractor's employees worked 21 hours each.

As this claim addresses the assignment of disputed work to those not covered by the collective bargaining agreement, we must begin with this general principle. It is well-settled that work belonging by agreement to one group may not be given to those not in that group. As this Board wrote in Third Division Award 5300,

This Board has often held, and it is fundamental in order to maintain the scope of any collective agreement, that work belonging to those under an agreement cannot be given to those not covered thereby.

Similarly, the Fourth Division wrote in Award 2641,

Where employees and their work are covered by a collective bargaining agreement, those employees are entitled to perform such work unless a clear commitment exists to the contrary.

Here, there is no dispute that the work, removing a signal bridge and signal cantilevers, is Scope-covered work. The Carrier acknowledged as much in its contracting notice on April 13, 2018. But due to the type of the structure, the Carrier felt that it would be safer to have contractors remove the structures using equipment not possessed by the Carrier. Although they tried, the parties were unable to agree to terms which would permit these outside contractors to perform this Scope-covered work. Nonetheless, the Carrier moved forward using the contractors.

However, there is nothing in the parties' Agreement that would permit this transfer of work without the Organization's acquiescence. The only stated exception to the Scope Rule reads, "(a) Work performed by outside companies incident to warranty, provided a qualified employee covered by this Agreement accompanies the outside contractor," and is clearly not applicable to the situation here.

The Carrier engaged outside contractors to perform Scope-covered work. While its stated intention was to ensure the safety of its employees, it did not have the contractual right to do so. Thus, it was in violation of the parties' Agreement.

Having found the Carrier to be in violation, we next address the appropriateness of the requested remedy. It is an axiom in the law that there is no right without a remedy. As the Board opined in Third Division Award 21340:

With regard to compensation, numerous prior authorities have held that an award of compensation is appropriate for lost work opportunities notwithstanding that the particular claimants may have been under pay at the time of violation.

Compensation awarded should be reasonable in view of the record evidence and realistically related to the amount of work actually contracted that represents the loss of work opportunity. Here, the record demonstrates that three contractors worked a total of 63 hours. Therefore, the Claimants are entitled to be compensated for 63 hours at their appropriate rate, to be divided between them. There is no contractual justification for a remedy beyond this amount.

AWARD

Claim sustained in accordance with the Findings.

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 29th day of July 2021.