

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44524
Docket No. SG-45041
21-3-NRAB-00003-180479**

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 all BRS-represented Blue Island Signal Department employees, for 1,452 hours to be divided equally at their respective straight-time rates of pay, 1,258 hours to be divided equally at their respective overtime rates of pay, and 194 hours to be divided equally at their respective double-time rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when beginning on January 14, 2017, it permitted Gibson District employees, not covered under the Agreement, to perform the Scope-covered work of upgrading/overhauling the existing system on the Blue Island District, thereby causing the Claimants a loss of work opportunity and the opportunity to earn the wages associated therewith. Carrier's File No. 17-2-IHB. General Chairman's File No. 17-2-IHB. BRS File Case No. 15876-IHB. NMB Code No. 105.”

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 all Brotherhood of Railroad Signalmen represented Blue Island Signal Department employees, who, at the time this dispute arose, were assigned to various positions in the Carrier's Signal Department on the Indiana Harbor Belt Blue Island Seniority District. The Signal Department has a total of 45 employees and is divided into two territories: Blue Island, with 26 employees, and Gibson, with 19 employees.

On September 7, 2016, the Carrier assigned the Claimants to perform a complete upgrade of the existing signal system at the Dolton Interlocking on the Blue Island Seniority District, a project that was expected to take four months. The Claimants worked this assignment for several months during their regular tour of duty, but the project was significantly delayed. In December, the deadline for completing the project was extended to February 28, 2017. On January 14, 2017, the Organization learned that the Carrier intended to permit employees from the Gibson Seniority District to perform the work of construction, installation, repair, inspection, testing, maintenance or removal of signal equipment, and control systems on the Blue Island Seniority District.

On January 16, 2017, the Organization protested the Carrier's use of Gibson employees assisting on the project. The Organization and Carrier attempted to resolve the objection filed by the Organization but were unable to do so. By letter dated March 10, 2017, the Organization presented a claim to the Carrier which was denied by letter dated March 20, 2017. 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 disputed work is Scope-covered work and is reserved exclusively to the Claimants. The Organization further contends that the Blue Island District and the Gibson District signal employees are divided into two separate seniority districts, governed under separate collective bargaining agreements and represented by separate General Committees. As such, the signal employees in the Gibson District do not hold seniority under the Blue Island District collective bargaining agreement.

The Organization contends that in 1999, the Carrier reached out to the Organization to gain a Letter of Agreement for the Gibson Seniority District

employees to perform work on the Blue Island Seniority District, and that a similar Agreement should have been reached here. The Organization contends that the Carrier sought to reach an agreement with the Organization but abandoned its effort after only one week.

The Organization contends that when employees are deprived of the opportunity to perform work that accrues to them under the Agreement, they lose the wages they would have earned for doing the work and are entitled to recover for such loss. Thus, the Organization contends that the Claimants are entitled to compensation for 1,452 hours to be divided equally at their respective straight-time rates of pay, 1,258 hours to be divided equally at their respective overtime rates of pay, and 194 hours to be divided equally at their respective double-time rates of pay.

The Carrier contends that the Organization has failed to show how the Scope Rule was allegedly violated. The Carrier points out that the two collective bargaining agreements have identical Scope Rules. The Carrier contends that there is nothing in this Agreement which prevents it from assigning employees from one seniority district to work in another seniority district.

The Carrier contends that the Organization's employees are not entitled to any remedy, because they were offered the work but turned it down. The Carrier contends that Blue Island signal employees were offered all the available straight time and overtime work. The Carrier contends that if the Claimants had completed the task in a timely manner, there would have been no need to bring in the Gibson signal employees in January.

The Carrier contends that the project was not completed on time because the Claimants failed to accept offered overtime and created delays through their dilatory work habits. The Carrier contends that, despite its objections, the Claimants only increased their productivity after the Gibson employees were assigned. The Carrier contends that the Claimants should not be rewarded for failing to timely complete the project by awarding them overtime compensation.

The Carrier contends that there is nothing in the parties' Agreement that required the Carrier to give notice to the Organization that it intended to use its Gibson and Blue Island employees side by side. Despite this, the Carrier entered into

good faith discussions with the Organization and did not assign the Gibson employees while negotiations were ongoing.

The Carrier contends that the Organization has failed to demonstrate that the 1999 Agreement created a binding past practice. The Carrier contends that the circumstances are distinguishable. Further, the Carrier contends that its willingness to agree to terms in 1999 did not bind it to those same terms in 2018.

As this claim addresses the assignment of work claimed by another, we must begin with the basic principle. It is well-settled that work belonging by agreement to one group may not be given to another 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.

Therefore, the initial question that must be resolved by this Board is whether the disputed work, upgrading/overhauling the existing system at the Dolton Interlocking on the Blue Island District, is work covered by the Scope Rule of the parties' Agreement, which reads, in part:

These rules shall constitute an agreement between the Indiana Harbor Belt Railroad Company and its employees represented by the Brotherhood of Railroad Signalmen covering rates of pay, hours of service, and working conditions of employees in the classification hereinafter listed who are engaged in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work:

Interlocking systems....

The answer to this first question is clear-cut, as even the Carrier concedes that this work falls under the Scope Rule, but it argues that identical language can be found in the Scope Rule of the CSXT/BRS Agreement that covers the Gibson District employees. Therefore, the Carrier argues, it was within its rights to assign its

employees from either seniority district when it became apparent that the project would not be finished on time using only Blue Island District employees. The record shows that the Carrier assigned employees from both seniority districts to work on the same project.

There is nothing in the parties' Agreement that would permit this transfer of Scope-covered 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.

In 1999, the parties recognized this restriction and entered into an agreement permitting "Gibson BRS represented employees being allowed to perform work on the IHB/BRS represented territory during the construction projects to be performed at Cottage Grove Avenue and Dolton Interlocking in Dolton, Illinois," the same location as the current dispute.

Here, when the Organization objected to the Carrier's intended use of the Gibson District employees, the Carrier temporarily halted its plan for using Gibson District employees on the Blue Island District. The parties attempted but were unable to reach an agreement regarding the use of both districts' employees. On January 30, 2017, when the Carrier perceived that the parties had reached an impasse, it began assigning Gibson District employees to the project in the Blue Island District and the Organization filed the instant claim. By February 28, 2017, the work was completed, and all Gibson District employees were removed from the Blue Island District.

The Carrier complains that it was under great pressure to finish its work at the Interlocking because several Class One railroads were affected while it was inoperative. It argues that it offered overtime to Claimants, but they turned it down. The Carrier presented un rebutted evidence that trainees (the least senior employees) were working nearly all the overtime before the Gibson employees were brought in, showing both that overtime was available and that the more senior employees had been offered it, but refused it. The Carrier argues that the Claimants should not be rewarded for their refusal to get the job done in a timely manner. Regardless of how likely the Carrier's frustration may have been, this Board cannot sanction violation of the parties' Agreement as a solution.

The Gibson District employees are not covered by the parties' Agreement. Although they are in the Carrier's service, a separate Agreement governs their working conditions, and thus, their seniority. These signal employees are employed by IHB, but they hold no seniority on the district on which the work was performed. In so assigning the work, the Carrier violated its Agreement with the employees on the Blue Island District. Accord, Third Division Award 20565; Third Division Award 19543.

Having found that the Carrier violated the Agreement, we next address the appropriateness of the requested remedy. The Carrier contends that the claim is excessive because it wanted the Claimants to perform this work and that it was only necessary to bring in Gibson District employees because the Claimants were turning down offered overtime and were working too slowly. The Carrier argues that it was under immense pressure to finish the project timely but that the Claimants would not accept the offered overtime until the Gibson District employees were brought in.

It is the Organization's burden to establish the amount of time spent by the employees from the other seniority district and the actual loss of work opportunity. If the Claimants were called but turned down offered work or were otherwise unavailable on the dates and times that the Gibson District employees were working in their District, they are not entitled to a monetary remedy for that time. Therefore, this Board will remand the matter to the parties to determine which, if any, of the Claimants made themselves available for overtime work between January 30 and February 28, 2017, on the days that the Gibson District employees were performing duties in their seniority district. Only those Claimants who could have been reasonably assigned to do the work are entitled to a compensatory remedy.

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.