

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44609  
Docket No. SG-45829  
22-3-NRAB-00003-200143**

**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: (  
(ILLINOIS CENTRAL RAILROAD COMPANY)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of W.Z. Almazan, E. Karsten, J.R. Oldham, and C.J. Rardin, for 11.42 hours straight time each for Maintenance of Way digging out and reinstalling a gate foundation and setting the new gate mechanism, at Westwood Avenue, Addison, IL, MP 22.85 for violating in particularly Rule 1 (Scope), by utilizing Maintenance of Way thereby denying the Claimants the opportunity to perform work which is exclusively reserved to them by the Agreement. Carrier's File No. IC-008-18. General Chairman's File No. IC-BRS-2018-00009. BRS File Case No. 16135-IC. NMB Code No. 177.”**

**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 W.Z. Almazan, E. Karsten, J.R. Oldham, and C.J. Rardin, who, at the time this dispute arose, were assigned to the Carrier's**

Signal Department. On July 7, 2018, the Carrier assigned a Maintenance of Way (“MOW”) employe to remove and install a foundation for a highway grade crossing mechanism at Wetswood Avenue, M.P. 22.85 on the Freeport Subdivision. None of the Claimants were provided the opportunity to perform this work.

By letter dated August 31, 2018, the Organization presented a claim to the Carrier which was denied by letter dated October 29, 2018. 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 violated Rule 1, Scope, of the parties’ Agreement when it permitted a MOW employe to perform Scope covered work. The Organization contends that the foundation for the grade crossing mechanism is reserved exclusively for the signal system. Rule 1 provides that those employees governed by the Agreement are those “performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling...of...all signals and signaling systems.” (Emphasis added)

The Organization contends that it is undisputed that work on the foundation for the grade crossing mechanism is exclusively for the signal system and the grade crossing foundation is an appurtenance of the signal system. The Organization contends that the Carrier did not dispute that this is scope-covered work.

The Organization provided statements from the Claimants refuting the Carrier’s assertion that they called the Claimants but they were not available. The Organization contends that instead, the Carrier attempted to circumvent the Agreement by calling an employe from a separate craft to perform signal work.

The Organization contends that the requested remedy is not excessive. The Organization points out that the Board has held if the Claimants were able to perform the work on an overtime or rescheduling of work basis, then compensation for the loss of work opportunity would be sustained.

The Carrier contends that the Organization has not met its burden to prove that there has been a violation of the parties’ Agreement. The Carrier contends that the Organization has provided only statements of opinion or unsubstantiated allegations.

The Carrier contends that there is nothing in the parties' Scope Rule that specifically reserves the removal and reinstallation of foundations to BRS represented employees. Further, the Carrier contends that the Organization has provided no evidence to support that every instance of wayside digging is exclusively reserved to the Organization's members. The Carrier contends that it has consistently used MOW employees and outside contractors to perform such work across the system. The Organization has failed to show how the work claimed is exclusively signal work and/or that it was not done in conjunction with other work being done at the time.

The Carrier contends that the parties agreed that workers on the "Homewood Project" would not be called for several days so that they could be off duty for the Independence Day holiday. Thus, the Carrier contends, the Claimants were not available to perform the disputed work.

The Carrier contends that it utilized four BRS-represented employees and one MOW employee to perform the disputed work and that it only utilized the MOW employee after no BRS-represented employee was available.

The Carrier contends that the Organization's request for remedy is excessive and the Organization has failed to provide any evidence to support its claim that each of the four Claimants is entitled to payment equal to the number of hours that one employee worked.

The Board finds that the work in question was work that was covered by the Scope Rule of the parties' Agreement. While the Carrier tried to characterize the work as "wayside digging," there really is no question that the work done by the MOW employee was in conjunction with the construction, installation, repair, or dismantling of signals and signaling systems.

Further, the Carrier took the position that the Claimants were not available to do the work due to their assignment to the Homewood project, and then argued that it had tried to secure another BRS-represented employee to perform the work, but the two who were called did not answer the call. Thus, the Carrier indicated that BRS-employees would have performed the work if the Carrier had found them available.

However, the Carrier presented no evidence to support its affirmative defense that the Claimants were not available or could not have been assigned to perform this work. No phone records were introduced to support the Carrier's claim that any BRS employees were called but did not answer. The Organization has shown that the Claimants should have been assigned the work in lieu of the MOW employee not covered by the Agreement. The fact that the Claimants were resting per an agreement with the Carrier does not preclude a finding that the Agreement was violated.

The Carrier argued that the requested remedy is excessive, as the Organization is seeking compensation for four employees when only one MOW employee performed the Claimants' work. While the Claimants are entitled to a monetary remedy, the record supports a finding that a total of 11.42 hours at the straight time rate is appropriate, as only one MOW employee was assigned.

**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 29<sup>th</sup> day of October 2021.