

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44610
Docket No. SG-45830
22-3-NRAB-00003-200144**

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 S.O. Kone, H.W. McKeehan, T.F. Moore, III, and R.M. Winslett, for 320 hours each at their current respective rates of pay for work performed on July 9–29 and August 13–19, 2018; account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and past practice, when it utilized outside Contractors to spread rock and fix retaining walls at various signal locations on Bluford North and Bluford South subdivisions; thereby denying the Claimants the opportunity to perform work which is exclusively reserved to them by the Agreement. Carrier's File No. IC-009-18. General Chairman's File No. ICBRS-2018-00008. BRS File Case No. 16134-IC. 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.

At the time this dispute arose, the Claimants were assigned to various positions in the Carrier's Signal Department. On July 9 to 29, 2018, and August 13 to 19, 2018, the Carrier permitted Rail Works, an outside contractor, to spread rock, repair retaining walls, and move track wires at various Mileposts on the Bluford North and Bluford South subdivisions.

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 permitted Rail Works, an outside contractor, to perform Scope-covered work from July 9 to 29, and August 13 to 19, 2018, specifically, to spread rock, repair retaining walls, and move track wires at multiple signal locations. The Organization contends that by doing so, the Carrier violated the parties' Agreement.

The Organization contends that Rule 1 clearly and unambiguously reserves the disputed work to the Claimants. The Organization recognizes that the work was done as part of installing the Positive Train Control ("PTC") system but contends that the communication tower at the location is there to relay signal information for the signal system. The Organization contends that the Scope Rule reserves the right to the Claimants to install any component, appurtenances, and apparatus of the signal system and the retaining wall and mound were necessary because of the signal system. Therefore, the Organization contends that Claimants lost a work opportunity to spread rock, repair retaining walls, and move track wires.

The Organization contends that because the Carrier assigned this work to outside forces, it need not show that the disputed work has been performed exclusively by its members. The dirt work was for signal purposes, and thus the Claimants had the exclusive right to be assigned the work. Consequently, the Claimants suffered a loss of work opportunity and should be granted compensation.

The Carrier contends that the Organization has not met its burden to prove there has been a violation of the Agreement. The Carrier contends that the Organization's members have no exclusive right to the installation and maintenance of such systems. The Carrier contends that the equipment claimed (PTC and ATCS transmitters, routers, polyphasers, and affiliated interconnect cables, equipment, and wiring that are interconnected to the CTC signal equipment) is not Signal equipment.

Not only is the referenced equipment absent from the BRS scope, the Organization has failed to show that such equipment has ever been installed by BRS employees.

The Carrier contends that many arbitral awards uphold the principle that work which is not exclusive may be assigned to any or a number of crafts or outside employees to perform such work. The installation of PTC and ATCS equipment and bungalows is not exclusive to the Organization.

Finally, the Carrier contends that the Organization's request for remedy is excessive and without agreement support. Notwithstanding that the work in question does not exclusively belong to the BRS, the Organization has offered nothing to support its claim for payment equal to the amount of hours worked by the vendor. All BRS employees were already performing service, including overtime, on behalf of the Carrier. There has been no showing that any BRS employee lost any compensation or work opportunities.

The work claimed by the Organization is spreading rock and fixing retaining walls at various signal locations. By virtue of the fact that the work occurred at signal locations, the Organization contends that it is Scope-covered. The Scope Rule in the Agreement states, in part:

RULE 1 – SCOPE

This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department... performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling, inspection, testing and maintenance, either in signal shops or in the field, of the following:

(a) All signals and signaling systems; traffic and C.T.C. control systems; interlocking plants and interlocking systems; train stop and train control equipment and devices...trackside track occupancy indicators;

(h) All other work generally recognized as signal work.

(i) No employee or person other than those covered by this agreement shall be permitted to perform any work covered by this agreement.

The on-property record demonstrates that the work performed referenced by the Organization was related to PTC construction and repairs on bungalows containing both PTC and Signal equipment. The retaining walls that were repaired physically support PTC towers/antennas, PTC cases, and other equipment in or around the CTC bungalows. In addition, the work also included the addition of water drains, correcting water drainage issues and also the extension of retaining walls to make room for PTC towers.

The Organization bears the burden of proving all the elements of its claim. The Signalman's Agreement clearly reserves to the Organization's members all work relative to "signals and signaling systems" and "all other work generally recognized as signal work." The Organization presented evidence that the work was performed at signal locations. However, it offered no evidence that the work done associated with PTC construction and repairs was worked to be performed for the purpose of a signal system and thus, "signal work." The Scope Rule does not expressly refer to the work in dispute here. *See, e.g.,* Award 52 of PLB 6785.

When the Scope Rule does not expressly reserve the work to the Organization's members, in order to prevail, the Organization must present evidence that the work has traditionally and historically been performed by BRS members. The Organization failed to meet that burden. Therefore, the record does not support the conclusion that the assignment of this work to outside contractors violated the Agreement.

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 29th day of October 2021.