

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44611
Docket No. SG-45899
22-3-NRAB-00003-200473**

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 C.K. Clough, J.D. Evans, S.O. Kone, H.W. McKeehan, T.F. Moore, III, J.M. Pick, J.J. Rees, and R.M. Winslett, for 40 hours each at their current respective rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and past practice, when it utilized outside Contractors instead of the Claimants to install cable from control point River M.P. 9.8, Naperville, Rd. M.P. 9.61, Main St. M.P. 9.53, and Center St. M.P. 9.41; thereby denying the Claimants the opportunity to perform work which is exclusively reserved to them by the Agreement. Carrier's File No. IC-BRS-2018-00012. General Chairman's File No. IC-012-18. BRS File Case No. 16160-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.

The Claimants in this matter were assigned to various positions in the Carrier's Signal Department at the time this dispute arose. Around November 7, 2018, the Carrier permitted S&C Solutions, an outside contractor, to install cable at nearly a dozen and a half locations on the Leithton Subdivision.

By letter dated November 23, 2018, the Organization presented a claim to the Carrier which was denied by letter dated January 18, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

In the on-property correspondence, the Organization submitted statements contending that work in question - trenching in the DAX cables, boring, and installing conduit over two bridges - was Scope-covered work. The Organization's statements asserted that the purpose of the work was to replace the HD Links, which were historically installed, wired, and tested by BRS-represented employees.

The Carrier replied:

The contractors working on the Leithton sub are installing pipe across two bridges for the installation of communications fiber. The bridge department was contacted to install the pipe across the bridge, as it is their structure, and agreed to letting a contractor perform the work. The boring in question is also for the installation of communications fiber that will replace the existing radio system. This fiber is not being done to replace the HD links at all the EJ&E locations. The installation of this span of fiber will not replace any HD links at all - it will merely replace the existing radio link that is being maintained by the communications department. The contractor is not installing any DAX or signal related copper cables. CN signal employees will be on site Monday, November 12 to install copper cable for future CN signal projects.

The Organization contends that the Carrier violated the current Signalmen's Agreement, particularly Rule 1 – Scope, when it permitted an outside contractor to install cable at multiple signal locations, denying the Claimants the opportunity to perform work which is exclusively reserved to them. The Organization contends that the language of Rule 1 – Scope is simple and clear and reserves the right to the Claimants to install any component, appurtenances, and apparatus of the Signal System.

The Organization contends that the Carrier has failed to provide evidence to support its affirmative defense that the work in question was communications work. The Organization contends that this Scope-covered work should have been assigned to the Claimants. When the Carrier assigned the disputed work to outside contractors, it violated the parties' Agreement.

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 has failed to provide substantial evidence to substantiate its claim.

The Carrier contends that the Organization has failed to present evidence to show that all boring and every piece of conduit intended for communications equipment has been installed by the Organization's members. Thus, the Carrier contends, the Organization cannot establish a past practice with respect to the exclusivity of the work. The Carrier contends that it has previously used IBEW employees and outside contractors to perform this work across the system.

The Carrier contends that the contractor did not install any DAX or signal related cables but installed pipe across two bridges for the installation of communication fiber. The Carrier contends that the work does not fall under the Agreement Scope Rule as the pipe was installed on the Bridge Department's structure and the communication fiber replaced the existing radio link maintained by the Communications Department. The installation of communications equipment is not exclusive to the Organization and this work is clearly listed in the IBEW Agreement. The Carrier points out that BRS-represented employees are not required to possess a FCC license to install and repair these radios. The shared work is not exclusively reserved to any craft and the Carrier may assign it as it chooses.

Finally, the Carrier contends that the Organization's requested remedy is excessive. The Carrier contends that the Organization has failed to show how the Claimants lost any time or money as a result of the Carrier's actions. All BRS employees were already performing service, including overtime, on behalf of the Carrier.

The Signalman's Agreement provides, at Rule 1,

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;

(g) Underground boring as outlined in the Underground Boring Agreement dated February 1, 2006. (Reference Appendix P)

(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 evidence in the record shows that the outside contractors installed pipe for the installation of communications fiber, which was not intended to replace the HD links. The Carrier's unrefuted statement is that the fiber replaced the existing link maintained by the Communications Department, not the HD links which are part of the signal system. Therefore, the Board finds that the disputed work is not expressly named in the Signalman's Agreement Scope Rule.

When the work is performed by outside contractors, the Organization need only show that the disputed work is recognized as signal work, historically performed by its members. While the Organization presented evidence that its members have historically installed, wired, and tested HD links, the unrefuted statement from the Carrier is that HD links were not involved in this work. Therefore, the Organization has not proved a violation of the parties' Agreement.

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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.