

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44920
Docket No. SG-47169
23-3-NRAB-00003-210863**

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: (
(Union Pacific Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of K.J. Adams, O. Banda, W.A. Bear, Jr., B. Bennett, J.P. Driskill, S. Perez, J. Posada, R. Threadgill, M.R. Vaughn and C.C. White, Jr., for 6000 hours at their respective rate of pay divided among the Claimants and continuing until the contractor is removed or work is complete; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 65, when on June 8, 2020, it assigned a contractor Tri Point Construction to install airlines for retarders in Englewood Yard at Mile Post 357 on the Houston Subdivision, thereby causing the Claimants a loss of work opportunity. Carrier’s File No. 1741014, General Chairman’s File No. S-SR,65-63, BRS File Case No. 4623, NMB Code No. 312 - Contract Rules: Scope.”

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 multiple positions within the Carrier's Signal Department. On June 8, 2020, the Carrier assigned Tri Point Construction, a contractor, to the task of installing and upgrading air lines and compressors to the retarder system in the Englewood Yard, M.P. 357, on the Houston Subdivision in Houston, Texas. The contractor assigned ten employees for 10 hours per day until August 6, 2020.

In a letter dated August 6, 2020, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated September 30, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier has violated the Scope Rule of the Agreement by allowing outside contractors to construct, install, maintain, and repair car retarder systems, which is reserved for the Claimants. The Organization contends that the Scope Rule specifically reserves this work to its members, to wit:

"This agreement governs the rate of pay, hours of service and working conditions of employees in the Signal Department, who construct, install, test, inspect, maintain or repair the following:

1. (c) car retarder systems

3. Storage battery plants with charging outfits and switchboard equipment, sub-station and current generating systems, compressed air plants and compressed air pipe mains and distributing systems as used for the operation of such railroad signaling, interlocking, and other systems and devices listed in (1) above. (This only applies to Signal Department electric or air lines within such systems and up to the necessary service connections)....

The Organization contends that numerous Boards have held that if the purpose of the work is exclusively for the signal system, it is Signalmen's work. *See, e.g.*, Third Division Award No. 19525. The Organization contends that the record shows compressed air plants and air pipe mains, and distributing systems are used exclusively for Signal Department purposes.

The Organization contends that when the Carrier takes the position that the

work required special skills, tools, equipment, and materials, it must show how those could not have been provided to the Signalmen. Upon the completion of the system, the Carrier expects the Organization's members to maintain, test, and repair the system.

The Organization contends that the Claimants are entitled to compensation for the loss of the work opportunity.

The Carrier contends that the Organization has failed to demonstrate that the Agreement has been violated. The Carrier contends that the disputed work is not exclusively reserved to the Signalmen in their Scope Rule and has historically been performed by other than signal employees. The Carrier contends that the Organization has presented no proof of exclusivity to members of this craft. The Carrier contends that the Organization submitted no statements to show that it has done this work.

The Carrier contends that the work at issue is the engineering, design, and fabrication of an entire yard air system. The Carrier contends that contractors have performed this work and that special skills and tools were required to construct the system that were not available otherwise. The Carrier contends that the contractor designed and installed an air system and main lines that could have been used to operate any number of different systems or devices in the Englewood yard that are not covered by the BRS's scope rule.

The Carrier contends that the Signal employees were responsible for installing the air lines to their equipment, and the contractors did not install any lines that ran to the car retarder system. The Carrier contends that this case does not involve the contractors installing the actual retarders, so awards addressing that work do not apply.

Finally, the Carrier contends that the claim is excessive. The Carrier contends that the Claimants cannot show that they suffered any employment loss.

The Board finds that the Organization has failed to meet its burden of proving a violation of the parties' Agreement. The on-property record shows that the air lines installed by the contractors were the main supply line for all the equipment in the yard, and that installation required specialized equipment that the Carrier does not possess. The disputed work was part of a mixed-use project, to be used by multiple departments, not solely the Signal department. As such, the Signal employees do not

have exclusive right to perform the work.

Furthermore, the Carrier asserted, without refutation by the Organization, that the Signal employees took the air line from the point of demarcation, as spelled out in the Agreement, to the signal equipment. The Organization has proven that there are contractors performing work at the Carrier's direction but has not shown that they are performing Scope-covered work.

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 21st day of April 2023.