

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44924
Docket No. SG-47182
23-3-NRAB-00003-220065**

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 J.S. Cain, for 46 hours at his respective overtime rate of pay continuing until the contractor is no longer performing scope covered work; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, beginning on August 19, 2020, it assigned a contractor Reinhold Electric to refuel generators powering signal equipment between CP T591 on the Toyah Subdivision, thereby causing the Claimant a loss of work opportunity. Carrier’s File No. 1742645, General Chairman’s File No. S-SR-80, BRS File Case No. 4625, 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 Claimant was assigned as a Skilled Signal Maintainer on Gang 2611 within Carrier's Signal Department. On August 19, 2020, the Carrier assigned a contractor, Reinhold Electric, the work of refueling a generator used to power a signal cabin and signal equipment at CP T591 on the Toyah Subdivision.

Reinhold Electric consisted of one employee working one hour a day powering down generators for refueling operations, and restoring power once refueling operations were complete.

The Director of Signal Maintenance Ray provided a written statement explaining that two control points (CP) had recently been constructed. The generators were needed as the commercial power was not available when the CPs were placed in operation and were not within the signal system. The overall commercial power project was performed by Telecom (IBEW represented employees) at this location.

In a letter dated September 17, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated November 13, 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 language is specific, clear, and explicit in the fact that it reserves the right to construct, install, and maintain the signal system and all associated appurtenances and apparatuses to the Organization's members. The Scope Rule states, in part:

This agreement will include the appurtenances and apparatus of the systems and devices referred to herein.

The Organization contends that the generators involved in this dispute are used to exclusively power the signal system and are an appurtenance thereof. Moreover, the Organization provided statements from many Signalmen in the Appeal Letter, demonstrating Signal employees have a long history of installing, fueling, and removing temporary generators for the purpose of providing back-up power to signal cabins and signal equipment.

The Organization contends that the accepted demarcation point between signal and commercial power has always been the rain head. The Organization contends that the portable generator's installation occurs after the rain head, the point at which

a Signalman's responsibility is covered under the Scope Rule. The Organization contends that the portable generators are not merely replacing commercial power, as was incorrectly found in Third Division Award 41131.

The Organization contends that arbitral precedent holds that if the purpose of the work is exclusively for the signal system, it is Signalman's work. Third Division Award 42120. In such a case, only employees covered by the Signalman's Agreement are entitled to perform the work.

The Carrier contends that the generators at issue were not part of the signal system. Therefore, they are not appurtenances as provided in the Scope Rule. The Carrier contends that the Organization has failed to prove that the Signalmen performed fueling generators to the exclusion of all others.

The Carrier contends that the work of installing commercial power may be performed by Telecom and/or contract forces, and the interim non-scope covered duties of monitoring (filling with fuel) portable gas-powered generators to maintain power for Telecommunication and Signal department systems until permanent commercial power was completed is not reserved to the Organization.

The Carrier contends that the claim is excessive. The Carrier contends that the Claimant would not be entitled to three hours call out when the work would be planned work. The Carrier contends that the Organization has provided no evidence to show that the Claimant would be called to fuel generators on the weekends. The Carrier contends that the Organization has failed to show how often the generators were fueled.

This is not the first time that the parties have addressed the issue of refueling generators. However, in this case, the Carrier provided a statement that the generators were not part of the signal system and therefore cannot be an appurtenance to the system. The Carrier stated that the generators were needed as the commercial power was not available when the CPs were placed in operation and were not within the signal system. The Organization replied that this statement was false and reiterated its position that the generators are part of the signal system.

In the instant matter, the Board is confronted with a conflict in the facts regarding the purpose of the portable generators. The Board is an appellate body and, as such, has no mechanism for measuring the validity of the contradictory statements. It is the well-settled principle of numerous Awards that when there is a

conflict in material fact, the Board must deny the matter because the dispute in fact prevents the Organization from sustaining its burden of proof. Accordingly, the claim is denied.

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.