

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45271
Docket No. SG-47402
24-3-NRAB-00003-220472**

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 Company**

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 B. Garton, S. Tilley, D. Taylor, and W. Jenkins, for compensation of 16-hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, beginning on June 21-22, 2021, Carrier assigned a Contractor, Hunt Electric, scope-covered work of removing 4 spans of secondary power line, installing a 25 KV step-up transformer between the power feed and Signal House, including installing a 60 amp circuit breaker, and hung triplex from the feed transformer to the H fixture at M.P. 420.0 on the Sidney Subdivision, resulting in a loss of work opportunity to the Claimants. Carrier’s File No. 1760502, General Chairman’s File No. N-0285, BRS File Case No. 5402, 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.

The Claimants in this dispute were assigned to Signalman positions on Gang 8617. The Claimants worked from 7:00 AM to 6:00 PM on the “Y6” calendar.

On June 21 and 22, 2021, the Carrier utilized three contractors from Hunt Electric to disconnect and remove Carrier-owned primary and secondary power lines at M.P. 420.0 on the Sidney Subdivision. Additionally, the Carrier employed the contractors to hang a 25 KV step-up transformer, install 60v amp circuit breakers within the signal cabin, and connect triplex wire from the cabin to the feed transformer on the pole line “H” fixture.

In a letter dated July 19, 2021, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated September 7, 2021. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for final adjudication.

The Organization contends that the Carrier violated the controlling Agreement, particularly the Scope Rule, when it assigned an outside contractor to perform scope-covered work at M.P. 420.0 on the Sidney Subdivision.

The Organization contends that the language of the Scope Rule is clear and specific regarding the work performed in the instant case,

“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. (a) Interlocking plants and interlocking systems
(b) Signals and signal systems

(i) electrical switch locks and switch circuit controllers

2. High tension or other lines of the Signal Department, overhead or underground, poles and fixtures, conduits, transformers, arrestors and distributing blocks, track bonding, wires or cables, pertaining to railroad signaling, interlocking, and other systems and devices listed in (1) above.
3. Storage battery plants with charging outfits

12. All other work generally recognized as signal work, performed in the field or signal shops. The classifications enumerated in Rule 1 include all the employees of the Signal Department performing work referred to under the heading of 'Scope.'
13. This agreement will include the appurtenances and apparatus of the systems and devices referred to herein."

The Organization contends that the language is specific, clear, and unambiguous in that it reserves the right to construct, install, and maintain or repair, overhead lines or transformers which supply power to the Signal System and all associated appurtenances and apparatuses. The Organization contends that it provided prints that demonstrated the power was exclusively for the Signal Department. The Organization contends that any telecommunications equipment contained within the cabin derives its power from battery power charged by a Signal Department supplied charger and only exist at this location to comply with the PTC requirements of the Signal System.

The Organization contends that the Board has made clear that if the purpose of the work is exclusively for the Signal System, it is Signalmen's work. It was undisputed the work was performed at the signal cabin at M.P. 420.0 on the Sydney Subdivision. The work should not have been performed by those not covered by the Signalman's Agreement.

The Organization contends that the Carrier has asserted an affirmative defense that the installation was mixed use in nature and thus, the Organization's members had no exclusive right to the work, but has failed to provide evidence in support of this assertion. The Organization contends that the Carrier has failed to demonstrate a mixed use, as no equipment other than that used by the Signal Department derived its power from the AC power cable.

Furthermore, the Organization contends, the exclusivity doctrine has no applicability when the work was contracted to third parties. The work was not performed by other crafts but by contractors.

The Organization contends that the Carrier could have rescheduled Claimants' regular work, rescheduled the disputed work, or had the work performed on an overtime basis. The Organization contends that the Claimants have suffered a lost work opportunity, and so should be granted compensation.

The Carrier contends that the Organization has failed to show that the work performed involved Signal cables or Signal equipment. All work performed was limited to pole line removal, AC power distribution, and associated equipment with joint facilities containing both signal and telecom equipment.

The Carrier contends that the work was not performed exclusively for the Signal Department and thus, the Organization has failed to prove its jurisdictional argument. No scope-covered work was performed by the contractors.

The Carrier contends that the Organization failed to prove that its members have the exclusive right to perform work that was not for the sole use and benefit of the Signal department. The Carrier contends that the on-property statement of Manager of Signal Construction Parris made clear that contractors only performed work that was for mixed use. No scope covered work was performed and no signal cables were installed by the contractor.

The Carrier contends that it proved that other crafts, contractors, and public utility workers perform this work. This work was a mixed-use project which provided direct benefit to multiple departments. The Carrier contends that previous decisions of this Board which considered BRS claims over the use of IBEW employees performing some function related to providing power are controlling.

The Carrier contends that the “exclusivity doctrine” is not limited in application to jurisdictional disputes between crafts. The Carrier contends this doctrine has been applied to disputes involving multiple crafts as well as to contractors working under the contracting language of one of those crafts. The Carrier contends that the Scope Rule is the same whether the claim is against another craft or against outside contractors.

This is one of many cases where the Carrier asserts that if the BRS cannot show that this work was exclusively performed by Signalmen in the past, it is not Scope-covered work. However, as this Board has explained on numerous occasions, the “exclusivity doctrine” is inapplicable when a claim is against outside contractors. By way of example, we quote from Third Division Award 13236:

Carrier’s premise is that we are here confronted with a Scope Rule which does not specifically vest Signalmen with the right to the work here involved. From this it argues that to prevail Signalmen must prove that the employees covered by the Agreement have in the past “exclusively” performed such work throughout the property; and, not

only to the extent it is an incident to the skilled work of Signalmen. We believe this to be a misapplication of the exclusivity doctrine. The exclusivity doctrine applies when the issue is whether Carrier has the right to assign certain work to different crafts and classes of its employees—not to outsiders.

The Scope Rule from the controlling Agreement reserves the right to perform this work to the Signalmen, both specifically and by the general reservation of “work generally recognized as signal work, performed in the field or signal shops.”

The Carrier asserted that the specific work disputed here was for both the use of the Signal department and the Telecommunications department, and thus was for a “mixed use.” But the Carrier presented no evidence of how the disputed work in this case benefited any department other than the Signal Department. No evidence was presented showing what communication equipment would use the AC power installed by the contractors. The Carrier has failed to prove its “mixed use” defense in this case.

The work herein that was performed by Hunt Electric, installing AC power to the signal cabin, was for the exclusive benefit of the Signal Department. Currently, the work was only for signal use. The claim must be sustained.

AWARD

Claim sustained.

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 24th day of July 2024.