

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45274  
Docket No. SG-47511  
24-3-NRAB-00003-220708**

**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 C. Denham, K. Hall, G. Ledbetter, B. Long, and B Lumkins, for 36 hours each at their respective overtime rate of pay; account Carrier violated the Agreement, particularly the Scope Rule, when on September 14 and 22, 2021, it assigned a contractor, Reinhold Electric, to perform the scope-covered work of installing power poles and meter cans at M.P. 486.3 and M.P. 487.3, on the Little Rock Subdivision, causing a loss of work opportunity for the Claimants. Carrier’s File No. 1764685, General Chairman’s File No. VGCS-SR-219, BRS File Case No. 5546, 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 2749 in the Carrier's Signal Department.

On September 14, 2021, the Carrier utilized two men from Reinhold Electric to install a power pole and meter can for six hours at a crossing at M.P. 486.3 on the Little Rock Subdivision. On September 22, 2021, the Carrier utilized three men from Reinhold Electric to hand dig for a power pole and meter can for eight hours at an Electric Lock Switch at M.P. 487.3 on the Little Rock Subdivision.

In a letter dated October 6, 2021, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated November 8, 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 various locations on the Little Rock 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

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- (i) electrical switch locks and switch circuit controllers

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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

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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 power poles and meter cans involved in the dispute are exclusively used to power the signal system and are an appurtenance thereof. The Organization contends that it provided statements from Signalmen demonstrating Signal employees have a long history of installing power poles and meter cans for the purpose of providing power to signal cabins and signal equipment.

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 is undisputed that the work was performed at signal cabins at various locations on the Little Rock Subdivision. The work should not have been performed by those not covered by the Signalman's Agreement.

The Organization contends that once the Carrier asserted a "mixed use" affirmative defense, it must provide evidence in support of its assertion. The Organization contends that the Carrier has failed to present any evidence that the disputed work was not Scope-covered, as it identified no equipment in the signal cabin that was not used by the Signal system. 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.

The Carrier contends that the Organization has failed to show that the work performed involved signal cables or signal equipment. The Carrier provided a manager's statement that the new location will eventually be a PTC cabin, as well as a signal cabin. The Carrier contends that the installed power will be shared by multiple departments.

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 that this equipment was for the current benefit of any department other than the Signal Department. While the manager’s statement suggests that its future use will include PTC equipment as part of the telecommunications department, the current work was signalmen’s work. A planned future use does not prove a “mixed use” case.

**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 24<sup>th</sup> day of July 2024.