

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45279
Docket No. SG-47816
24-3-NRAB-00003-220191**

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 J.A. Reyes, for 8 hours at his respective overtime rate of pay and 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 November 11, 2020, it assigned a contractor Reinhold Electric to refuel generators powering signal equipment at Mile Post 283.3 on the Del Rio Subdivision, thereby causing the Claimant a loss of work opportunity. Carrier’s File No. 1746880, General Chairman’s File No. S-SR-112, BRS File Case No. 4690, NMB Code No. 302.””

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.

On November 11, 2020, the Carrier assigned a contractor (Reinhold Electric) the work of refueling generators used to power signal cabins and signals to newly installed signal cabins at M.P. 283.3 on the Del Rio Subdivision. The contractor's force consisted of one man working eight hours during the claimed date. The contractor drove to signal locations, powered down generators for refueling operations, and restored power once refueling operations were complete.

In a letter dated November 13, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated January 5, 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 language of the controlling agreement 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 exclusively used to 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. In the instant case, no commitment existed to allow

the outside contractors to perform the work under dispute.

The Carrier contends that the Organization has failed to prove a violation of the Agreement or that the disputed work is scope-covered work. The Carrier contends that the portable generators powered both Telecom and Signal department equipment and systems and that previous boards have found that equipment that sits outside of the service connection demarcation point merely serves as a replacement for commercial power.

The Carrier contends that Third Division Award 41131, an on-property award, resolves this dispute, because the Board there found that the Organization had failed to prove that its members historically performed the work to the exclusion of all others. See also, Case 1 of Public Law Board 7270. The Carrier contends that the Organization bears the burden of proving a system-wide past practice of performing such work to the exclusion of all others, which it cannot do. The Carrier contends that both Telecom and Signal department equipment and systems are powered by portable generators.

The Carrier also contends that the claim for damages is excessive.

This is not the first time that the parties have addressed the issue of refueling generators. In Third Division Award 40837, an on-property award, the Board wrote,

Even if these portable generators are not specifically referenced in the Scope Rule, or were not intended to be covered as “current generating systems” as argued by the Carrier, we find that the Organization established an historical practice of Signalmen installing and maintaining generators that provide power to operate the signal system during power outages or other circumstances.... Thus, we find that the Organization sustained its burden of proving scope coverage of the refueling work in issue.

We find the reasoning of this case to be more persuasive than that of Third Division Award 41131, which found that the Organization there had failed to demonstrate that Signalmen performed the work of refueling portable generators to the exclusion of other employees or contractors. While there are some cases to the contrary, 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. *See, e.g.,* Third Division Award 13236. While the Carrier argues that

the portable generators power both Telecom and Signal systems, it has presented no evidence to demonstrate that the generators are used by other than the signal system. If the Signalmen were claiming the work against another union, the Organization would be required to demonstrate that the work of refueling portable generators was done exclusively by its members. However, those who have historically performed the work have a right to it against non-employees.

The Organization has provided ample proof that this work has historically been performed by its members. Conversely, the Carrier provided no evidence that the claimed work was done other than in signal locations, or that any employees other than signal employees have done this work. Mere allegations are not proof.

The remaining question is to the remedy. The Carrier contends that the Claimant is fully employed and suffered no loss of work. However, the Board will follow the findings of numerous awards that a monetary award is necessary to protect the integrity of the Agreement even as to those claimants who were fully employed during the claimed period. The named Claimant is entitled to be compensated for the number of hours actually worked by the contractors on the dates cited in the original claim.

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.