

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45280
Docket No. SG-47817
24-3-NRAB-00003-220577**

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 R. Fegler, C. Gracey, S. Haggard, W. Hardy, M. Himes, and D. Munson, for compensation of 22-hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when Carrier assigned Contractor Idaho and Sedalia Railroad Co. (I&S) to preassemble 22 signal heads for the project between M.P. 162.1 to M.P. 171.44 on the Herrington Subdivision, resulting in a loss of work opportunity to the Claimants. Carrier’s File No. 1761292, General Chairman’s File No. N-0287, BRS File Case No. 5403, 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 of the dispute, the Claimants were assigned to Signal Gang 2695 on

the Herington Subdivision. On June 6, 2021, the Claimants discovered that the Carrier received 22 preassembled signal heads from the Idaho & Sedalia Transportation Company, LLC ("I&S"). The Claimants installed the signal heads from mile post 162.1 to 171.44 on the Herington Subdivision.

In a letter dated July 29, 2021, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated September 23, 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 Claimants discovered that the Carrier allowed a contractor, I&S, to perform the scope-covered work of assembling signal equipment. The Organization contends that the work performed by the contractors is expressed in the Scope Rule of the current Signalman's Agreement and is work that has been historically and customarily performed by Signalmen. The Organization contends that it provided numerous statements to this effect.

The Organization contends that the language of the Scope Rule is clear and unambiguous and reserves to the Claimants the right to construct all signals and equipment, which includes assembling all parts and materials associated with the signal head.

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 of preassembling signal heads is work for the signal system. The work should not have been performed by those not covered by the Signalman's Agreement.

The Organization contends that its claim was not untimely as it was filed within 60 days of the date of first knowledge of the scope-covered work being performed by strangers to the Agreement.

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 claim is untimely because the Organization failed to provide evidence of when the preassembly of the signal heads took place. The

Carrier contends that the Organization failed to identify when the alleged assembly work actually occurred. The Carrier contends that the work of preassembly took place several months prior to the date asserted by the Organization. Thus, the claim was not filed in compliance with Rule 56, which requires that a claim must be advanced within sixty calendar days from the date of occurrence upon which the claim is based.

The Carrier contends that nothing in the Agreement prohibits the Carrier from purchasing finished or pre-assembled products to be later installed by its on-property forces. The Carrier contends that it has a history of purchasing assembled, finished products that are later installed by Carrier forces. The Carrier contends that this practice has been upheld by numerous Boards.

The Carrier contends that it did not contract out the work and that it did not direct the work of preassembly. The Carrier contends that the work was performed at the direction of another entity that the Carrier neither owns nor controls. As such, the Organization cannot lay viable claim to such work for its members.

The Carrier contends that the Organization is seeking compensation for its members for work they were not entitled to perform. The Carrier contends that the Claimants suffered no lost work opportunity.

The first issue to be addressed is the timeliness of the Organization's claim. Rule 56 provides that all claims must be presented in writing "within 60 days from the date of the occurrence on which the claim or grievance is based." The Carrier asserted that the preassembly must have occurred more than 60 days before the claim was filed because the parts were already assembled when the Organization learned of them on June 6, 2021.

The Organization asserts that it could not be expected to anticipate that the Carrier was contracting with another to perform its work. The Organization contends that it could not have filed a claim until it was known that a violation had occurred. The Organization first became aware of the violation on June 6 when the parts were discovered and the claim was filed on July 29, 2021, clearly within 60 days of the date of the occurrence on which the claim is based.

The Carrier cites Third Division Award 44784, in which the Organization's claim was found to be untimely. However, in that case, the Carrier demonstrated that at the latest, the Organization became aware that the Carrier was purchasing pre-assembled parts on June 15, 2018, but did not file its claim until September 18, 2018,

more than 60 days later.

As the party asserting that the claim was untimely, the Carrier bears the burden of proving this affirmative defense. Third Division Award 37315. Here, the Carrier has presented only a broad assertion that the assembly of signal heads must have taken place in advance of when the material arrived on the Carrier's property, but offered no evidence of the actual date. The only date certain in the record is less than 60 days before the claim was filed and therefore, the Carrier's procedural objection must be denied.

With respect to the merits of the claim, the Carrier's use of preassembled parts is hardly a case of first impression. In Third Division Award 36320, the Board found that the purchase of reconditioned equipment was outside the reach of the Scope Rule. The purchase of equipment does not infringe on the Organization's work, even when the equipment has been preassembled by the seller. In Third Division Award 33472, the Board cited a number of nearly identical claims before finding that the purchase and delivery of signal equipment or devices from an outside seller does not violate the Scope Rule.

The Organization has presented no evidence that the preassembly was performed on parts owned by the Carrier or that the Carrier directed the work. There was no violation of the Scope Rule.

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 24th day of July 2024.