

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45363
Docket No. SG-47736
25-3-NRAB-00003-230120**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of A.L. Hernandez, E.C. Lopez, J.C. Rowland, B.L. Shelton, C.S. Woosley, for 825 hours each at their respective overtime rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when on February 17, 2022, it was discovered a contractor, Progressive, installed new signal crossing equipment at approximately M.P. 29.42 on the Kosmos Industry Lead. Carrier, in assigning an outside contractor to perform this work, violated the parties’ Agreement and caused the Claimants a loss of work opportunities. Carrier’s File No. 1774358, General Chairman’s File No. S206- SR-248, BRS File Case No. 5710, 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.

According to the Organization, of February 17, 2022, it learned that a contractor – Progressive – installed new signal crossing equipment at approximately MP 29.42 on

the Kosmos Industry Lead and non-covered individuals performed what otherwise would have been scope-covered work.

According to the Carrier, Rockport Terminals performed work in connection with a highway reconstruction project associated with the relocation of track on its property for its new transload facility; Rockport hired the contractor and paid for its services; and Rockport and not the Carrier controlled the work. Further, according to the Carrier, the project was of no cost and provided no discernable benefit to the Carrier and was directed by Rockport Terminals and all work that affected the Carrier-owned signalized crossings located on existing track structure was performed by employees represented by the Organization.

The rule stated in Third Division Award 37143 governs this case:

“... [T]he Board has long held that where work is not performed at the Carrier’s instigation, under its control, at its expense or exclusively for its benefit, contracting is not a violation of the Scope Rule of the Agreement.
...”

The Organization has not shown that the work performed on Rockport’s property fell under the requirements stated in Third Division Award 37143.

The Organization’s reliance on awards such as Third Division Award 30921 do not change the result. In Third Division Award 30921, the Carrier contracted work at a facility leased by the Carrier and defended on the basis that the property was leased and that it did not own the facility, which the Board rejected:

“The Carrier submits the Agreement has application only on the Carrier’s property, which was the intended meaning of the phrase ‘. . . in the signal shop or in the field.’ The Board fails to find such a limitation in the Agreement. Ownership of the property is not as significant as control. It is evident the Carrier had sufficient control over the property that it was able to designate what work was to be performed, by whom, and in what manner.”

That element of “control” by the Carrier over the work performed by Rockport’s contractor is lacking in this case.

The Organization has not met its burden, requiring that the claim be 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 19th day of December 2024.