Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 45366
Docket No. SG-47752
25-3-NRAB-00003-230131

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

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

STATEMENT OF CLAIM:

"Claim on behalf of T.N. Race, R. Threadgill, and M.F. Vannoy, for 832 hours at their respective rates of pay; account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when, beginning on February 15, 2022, a contractor, Reinhold Electric, installed meter cans, H fixtures, disconnect enclosures, and signal power cable for C.P. H307. Carrier, in assigning an outside contractor to perform this work, violated the parties' Agreement and caused the Claimants a loss of work opportunities. This is a continuous claim. Carrier's File No. 1773293, General Chairman's File No. S99-SR-271, BRS File Case No. 5711, 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, beginning February 15, 2022, the Carrier assigned an outside contractor, Reinhold Electric, to perform the scope-covered work

of installing meter cans, H fixtures, disconnect enclosures, and a signal power cable for C.P. H307 on the Angleton Subdivision.

The Carrier defended on grounds that past and current practice is that the type of work involved is performed by employees of other crafts, contractors, representatives from public utility companies and scope-covered employees. Further, according to the Carrier, the work did not involve signal cables or signal equipment and all work was limited to AC power distribution and associated equipment which feeds a joint facility containing both signal and telecom equipment, with no scope-covered work performed by contractor employees used to perform the work. The Carrier emphasizes that at no point did the contractor handle or install signal cables and no changes were made to the signal system.

The burden is on the Organization to demonstrate a violation of the Agreement. Third Division Award 35457 ("This is a contract dispute. The burden is therefore on the Organization to demonstrate a violation of the Agreement."). There is insufficient evidence to show that the specific disputed work in this case was exclusively reserved to scope-covered employees, either by rule or practice.

Based on the above, the claim shall 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.

LABOR MEMBER'S DISSENTING OPINION TO NATIONAL RAILROAD ADJUSTMENT BOARD THIRD DIVISION AWARD NO. 45366

(REFEREE EDWIN H. BENN)

The Majority's decision in this case was improper and premised on the misapplication of several principles that require a dissent.

For context, the record in this case established two primary components:

- The Collective Bargaining Agreement contains no provisions permitting the contracting out of signal work. The Collective Bargaining Agreement covers the installation of lines, fixtures, and disturbing blocks of the Signal Department.
- The Carrier assigned a contractor to install lines and fixtures associated with the signal department. This was supported with signal prints and pictures attached by the Organization.

On this basis, the Organization made a prima facie case that this was scope-covered work assigned to contractors in violation of the agreement. Despite this clarity, the Majority applied improper analysis on several grounds.

Exclusivity Doctrine Does Not Apply

Primarily, the Majority asserts "*There is insufficient evidence to show that the specific disputed work in this case was exclusively reserved to scope-covered employees, either by rule or practice*." The record and oral arguments provided that the "exclusivity doctrine" only applies in jurisdictional disputes between classes or crafts, not when the work is assigned to an outsider. This was established early on in ***Third Division Award No. 13236 (Referee John H. Dorsey)*** which held:

> "Carrier 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 issues is whether Carrier has the right to assign certain work to different crafts and classes if its employes- not to outside. We are here confronted with contracting out of work- not assignment of work to employes. That the Gas Company did the work without charge is immaterial.
>
> The employes of the Carrier, in any craft or class, which have performed the work, Signalmen in this case, have a contractual right to the work, against non-employes, unless Carrier proves: (1) an emergency; (2) lack of skill; (3) special tools and equipment; (4) lack of employe manpower. In the record before us Carrier has failed to prove the existence of any of these conditions. The Carrier is trying to clock itself with the 'exclusivity' argument to keep from addressing these issues. This was not an emergency, nor was it a lack of skill, or manpower, or the need of special tools or

equipment." ***See also Third Division Award Nos. 23217, 31386, 39520, 45271 (on-property), 45274 (on-property), and 45277 (on-property).***

Notwithstanding the improper application of this doctrine to the instant dispute, the only evidence on record to refute the scope-coverage was Carrier's assertion of a past practice in assigning this to others.

The Carrier's Lack of Rebuttal Evidence

In asserting a past practice, the Carrier had the burden to prove through a preponderance of evidence the elements that the practice was unequivocal, clearly acted upon, readily ascertainable over a reasonable period of time, and accepted by both parties ***See Public Law Board 6786, Award No. 1, Special Board of Adjustment 1194, Award No. 1, and Special Board of Adjustment 7778, Award No. 1.*** The only evidence submitted by the Carrier was a single vague and unverified statement from a Carrier Manager. The statement reads:

> "The installation of Commercial power services, disconnects, and associated conduits and transformers is non-exclusive work for BRS employees. Past, and current practice is that this work is performed by employees of other crafts, contractors, representatives from Public Utility Companies, and BRS employees.
>
> There was no work performed in this instance that involved any Signal cables or Signal equipment. All work performed was limited to AC power distribution and associated equipment which feeds a joint facility containing both signal and telecom equipment."

The Carrier and the record provided no evidence to support this alleged practice nor instances it referred to. There was nothing to establish a single element of a past practice. Moreover, the alleged use of telecom equipment was unsupported with evidence, refuted by the Organization, and shown to be false in the record. This single unsupported statement was used by the Majority to refute eight statements, multiple signal plans and agreement language provided in the record. Boards have long recognized that "*Mere assertions, self-serving declarations and general statements are of no real probative value to this Board"* ***Third Division Award No. 17051.*** Similarly, ***Third Division Award No. 20107*** recognized and held:

> "Nowhere in the record has the Carrier provided evidence of any supportive or explanatory facts as a basis for this conclusion. We therefore believe the criteria set forth in our prior Award 15444 (Dorsey) is applicable:
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> '….when Petitioner made a prima facie case, as it did, the burden of going forward with the evidence shifted to Carrier. The unsupported assertions of Carrier did not satisfy its burden….'"

As such being the case, the Majority failed in its review of the record and improperly gave weight to vague and unsupported assertions in its approval of the agreement violation in this case.

Conclusion

The findings in this award are not well reasoned nor supported. The Majority based its decision on unsubstantiated assertions made by the Carrier; the same type of assertion which are consistently deemed as inadequate for the Organization to meet its burden of proof in disputes. The Section 3

forum is an appellate review in which the analysis of the record and proper weight given to evidence is the guiding star. In this case, the Majority failed in its appellate review. Instead, it overlooked evidence presented and gave approval of a past practice devoid of evidence. These types of decisions embolden the Carrier in its endeavor of gaining a benefit through arbitration which it has failed to gain through the Section 6 bargaining process. This has the effect of improperly changing agreements and removing work from those that it properly belongs to. For all of the aforementioned reasons, I must respectfully and vigorously dissent.

Respectfully submitted,

Brandon Elvey
Labor Member