

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45476
Docket No. SG-46389
25-3-NRAB-00003-240411**

The Third Division consisted of the regular members and in addition Referee J. Warren Dent when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Canadian National (formerly Illinois Central)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of J.A. Basco, W.C. Blair, J.A. Douglas, J.L. Garner, Jr., K.W. Hamm, B.R. McBride, K.A. Varnado, R.M. Winslett, and C. Winters, for 40 hours each at their current respective rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and past practice, when it utilized outside Contractors instead of the Claimants to install bore pipe and fiber on the McComb Subdivision from M.P. 906.12 to M.P. 906.4 to M.P. 906.74 and from M.P. 906.12 to M.P. 906.14; thereby denying the Claimants the opportunity to perform work which is exclusively reserved to them by the Agreement.” [Carrier’s File No. IC-BRS-2019-00002; General Chairman’s File No. IC-002-19; BRS File No. 16266-IC; NMB Code No. 102]”

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.

It is undisputed that, on or about March 18, 2019, the Carrier used the employees of an outside contractor, Grady Crawford Construction, to perform the work described in the Statement of Claim. The threshold question is whether Carrier's doing so violated the Signalmen's Agreement, as alleged by the Organization. The concerned Agreements, Rule 1 - Scope and Schedule P - Underground Boring Agreement, follow in pertinent parts:

RULE 1-SCOPE

This agreement governs the rates of pay, hours of service, and working conditions of all employees in the Signal Department (except supervisory forces above the rank of Inspector, clerical forces and engineering forces) performing work generally recognized as signal work, which work shall include the construction, installation, repair, dismantling, inspection, testing and maintenance, either in signal shops or in the field, of the following:

- (a) All signals and signaling systems; traffic and C.T.C. control systems; interlocking plants and interlocking systems; train stop and train control equipment and devices, except that on rolling stock; car retarders and car retarder systems; highway crossing warning devices and their appurtenances; low voltage electric switch lamps: metal train order signals; spring switch mechanisms, except when sent to reclamation shops for renewal or scrap: trackside track occupancy indicators; bonding of track pertaining to the systems and devices herein and bonding for static protection (excluding the removal of bonds when jointed rail is being replaced by welded rail).**
- (b) High tension and other lines, overhead or underground; poles, cross arms, wires and fixtures, pertaining thereto; conduit systems, transformers, arresters and distribution panels; inside and outside wires or cables for signal and interlocking purposes.**

- (c) Storage batteries with their chargers; signal switching and switchboard equipment and current generating facilities, compressed air generating equipment, together with pipe lines and appurtenances pertinent thereto.
- (d) Pipe lines and pipeline connections, cranks, compensators, foundations and supports for the operation of switches or signals.
- (e) Welding, carpentry, painting, concrete, form, excavating and back filling work, including the operation of machines, used in connection with installing, repairing, or maintaining any system or equipment covered by this agreement, but does not include such work in connection with the erection and maintenance of structural metal cantilever and signal bridges, interlocking towers, or signal shop buildings.
- (f) Electric type switch heaters connected to or through signal, interlocking or car retarder systems.
- (g) Underground boring as outlined in the Underground Boring Agreement dated February 1, 2006. (Reference Appendix P)
- (h) All other work generally recognized as signal work.
- (i) No employee or person other than those covered by this agreement shall be permitted or required to perform any work covered by this agreement.”

APPENDIX P – UNDERGROUND BORING AGREEMENT

...[E]ffective January 1, 2007, the work of underground boring in connection with work outlined in the IC-BRS Agreement will become part of the IC-BRS Agreement Scope Rule.”

The Organization maintains that the contractor forces in question bored and installed fiber duct, made multiple road and track bores, installed bore pipes at various

locations, and pulled fiber cable between the signal bungalows in conjunction with the East Bridge Project on the McComb Subdivision near New Orleans, Louisiana. It contends that the purpose of the bores was to run fiber cable to transmit vital signal data between signal bungalows and from bungalows to track circuits, switches, and various signals. Asserting that, per Rule 1-Scope and Appendix P-Underground Boring Agreement, such work is reserved to BRS-represented signal personnel, the Organization filed the instant claim.

The Carrier maintained that the work performed served other than signal purposes or served dual purposes. It offered that the work allowed the signal houses to be interconnected with fiber cable, providing the means necessary to install IP Phones, which is Communications Department work reserved to IBEW-represented employees. The Carrier contended that equipment serving other than signal purposes and/or dual purposes is not reserved to any one scope. In addition, it maintained that the BRS Scope Rule does not cover the work performed as the Rule contains no reference to fiber cable and does not/cannot include equipment that falls under another Organization's Scope.

The Organization countered that the Carrier failed to prove its dual-purpose assertion. The Organization maintains that BRS-represented forces originally installed the signal cable at these locations. The photographic evidence and employee statements show that the initial and continuing use of the upgraded fiber duct and bore pipes was to support existing signal equipment. It contends that the project wiring diagrams, or prints, confirm that the fiber cable was intended to transmit signal data, not for IP phone use as claimed by the Carrier. Moreover, the Organization avers that, as of the March 4, 2020, conferencing of this claim, IP phones were still not in use at the locations involved in the instant claim.

Given the particular facts and circumstances in the record before us, the Board finds that the disputed work fell within the BRS' Scope Rule, and the Carrier violated the Agreement by assigning said work to the contractor. Understanding that fiber optic cable can transmit multiple data streams serving different purposes, the record demonstrates that the present use of the concerned cable was transmitting signal data. The present use, not any potential future use – i.e., IP phones - dictates who the work belongs to. See Third Division Awards 37710 and 43398.

Having determined the Agreement was violated, our focus turns to remedy. The Carrier contends that, as the Claimants were working during the times at issue in the instant claim, they are due no additional pay. That notwithstanding, the Carrier has

questioned the amount of time lost claimed by the Organization. Accordingly, the matter will be remanded to the parties to confirm the total number of hours the contractor's employees spent performing the disputed work. The Claimants are to be compensated an equal proportionate share of such hours at their straight-time rates of pay regardless of whether they were fully employed at the time. As in Third Division Award 28185, the Carrier did not show that the Claimants could not have performed the disputed work on an overtime or a rescheduling of work basis. Therefore, we similarly find the monetary remedy appropriate based on the work opportunity lost and to maintain the integrity of the parties' Agreement.

AWARD

Claim sustained in accordance with the Findings.

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 30th day of May 2025.