

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45477  
Docket No. SG-46398  
25-3-NRAB-00003-240412**

**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. Douglas, C.C. Evans, K.A. Varnado and R.M. Winslett, for 45 hours each at their current respective rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope), when it utilized an outside Contractor SNC Solutions to install signal foundations and supports on the Baton Rouge Subdivision at M.P. 374.01, M.P. 395.12, and M.P. 403.02; thereby denying the Claimants the opportunity to perform scope covered work which is exclusively reserved by the Agreement.” [Carrier's File No. IC-NRS-2019-00003; General Chairman's File No. IC-003-19; BRS File Case No. 16312-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.**

According to the record, on July 24, 2019, the Organization became aware that the non-covered employees of an outside contractor, SNC Solutions, were used to perform work at mileposts 374.01, 395.12, and 403.02 on the Carrier's Baton Rouge Subdivision. The Organization contends that said work involved the installation of signal foundations and supports, which it argues is exclusively reserved to BRS-represented signal personnel pursuant to Rule 1 - Scope. The Organization asserts that the Carrier's assigning of said work to other than covered Signal employees violated that Agreement. This claim followed.

The Carrier's denial of the claim is based, in part, on its contention that SNC Solutions did not install "signal foundations and supports"; that they, instead, installed what the Carrier referred to as safety decks/walkways that it averred were not signal-related and were required due to the landscape of this specific subdivision. Acknowledging that SNC did install foundations, the Carrier maintains that such were to support the non-signal deck/walkway, not the signal itself.

The Carrier contends that the installation of walkways has historically been performed by BMWWE-represented Bridge and Structure employees, not BRS-represented Signal employees. The claimed work has never been exclusively performed by BRS-represented employees, and the Organization has failed to establish otherwise.

Without prejudice to the positions referenced above, the Carrier defends its actions, in part, on the fact that the foundations were 10-foot long, screw-in types that it asserted required specialized hydraulic tools to install - equipment that the Carrier claimed it didn't possess and that the Claimants were not qualified to operate.

The Carrier notes that once the non-signal deck/walkway was erected, signal employees were brought in to perform the covered work of installing and securing the signals to the safety deck/walkway.

The Carrier maintains that, even if the Organization could show a violation of the parties' Agreement, the claimed monetary damages are excessive as the Claimants were fully employed on the claim dates and suffered no income loss.

The Carrier requests that the Organization's claim be denied.

The Organization contends that the Scope Rule reserves to covered signal employees the "construction" and/or "installation" of "foundations and supports for the operation of ... signals". Acknowledging that signal foundations have evolved over time - from those poured in a concrete mold to pre-cast concrete models to metal ones with

levelers – the Organization maintains that the screw-in style at issue is just a continuation of that design evolution. Design change notwithstanding, the foundation’s primary function remains the same - to support a wayside signal and the signal employees working on that signal.

The Organization avers that the Carrier provided no proof in support of its assertion that the installation of the subject foundations required specialty tools that the Carrier did not possess and that the Claimants were not qualified to operate. The Organization contends that, historically, signal employees have been provided the tools and training to perform Scope-covered work. Claiming a lack of tools or skills does not shield the Carrier from abiding by the Agreement.

The Organization contends that, contrary to the Carrier’s claim that the signal mast was mounted to the deck/walkway, the field photos attached to its May 29, 2020, conference recap correspondence instead show the signal mast to be directly attached to the foundation. The deck/walkway, which the manufacturer refers to as a “signal platform with supports,” is also attached directly to the foundation, separate from the signal mast.

At elevated sites, such as the claim locations, the Organization contends that covered signal employees have traditionally built dirt mounds, retaining walls, and rock walkways with handrails, as outlined in the Carrier’s Standards of Codes and Practices (SCP), to provide a pad area to support the associated signal equipment and the signal employees working on that equipment. Again, while the instant case signal platforms with supports might be a new equipment adaptation, the Organization avers that its purpose remains unchanged - to support the associated signal equipment and the signal employees working on said equipment.

The Organization takes the position that the construction and/or installation of these signal foundations and supporting signal platforms is reserved to BRS-represented signal employees per Rule 1-Scope and, in assigning the work to others, the Carrier violated that Agreement.

Concerning remedy, the Organization contends that the Carrier’s violation represents a loss of work opportunity for the Claimants. The fact that the Claimants were fully employed at the time of the violations is immaterial as it is well settled by prior awards in this industry that full employment is not a sufficient defense to a claim for lost earnings.

The Organization urges the Board to sustain its claim in its entirety.

**Rule 1-Scope reads, in relevant part, as follows:**

**“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...**

**\*\*\*\*\***

**(d) ...foundations and supports for the operation of...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.**

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**(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.”**

**This claim involves three signal locations on the Carrier’s Baton Rouge Subdivision - mileposts 374.01, 395.12, and 403.02 – where Scope Rule violations allegedly occurred. The Organization bears the burden of proving all the elements of its claim. The Board’s review of the record evidence regarding the work performed by the contractor at the 395.12 signal location - particularly the photographic evidence provided - finds that the Organization met its burden regarding that portion of the claim. Where the 374.01 and 403.02 signal locations are concerned, we find that the Organization did not meet its burden regarding those portions of the claim.**

**Regarding foundation installation, the parties’ Scope Rule expressly provides that such is Scope-covered work. While the Carrier defended its right to contract out**

the foundation install at 395.12 on its contention that the concerned screw-in foundation required special equipment not possessed by the Carrier and that the covered employees were not qualified to operate, that defense fails as the Carrier provided no probative evidence describing or demonstrating the equipment it alleged as necessary or how the operation of said equipment was beyond the capabilities of the covered signal forces.

While the Scope Rule does not explicitly reference "decks/walkways" or "signal platforms," it does reserve to the Organization's members all work "...generally recognized as signal work." Contrary to the Carrier's non-signal-related characterization of the concerned signal platform at 395.12, it is readily evident from the photographic record that the platform's presence is relative to and in conjunction with the 395.12 signal that it adjoins and supports. Moreover, were it not for the placement of the signal at this location, there would be no need for the existence of the signal platform at this location. This is not a generic, multi-purpose walkway built for use by a cross-section of employees. The photos substantiate that said platform was installed to provide safe access to the 395.12 signal for signal personnel working on that signal. On this record, we find the construction and/or installation of the 395.12 signal platform to be work performed solely for signal operation purposes and, thus, considered Scope-covered "signal work." Our opinion follows the principle adhered to by the Board over the years - the work's purpose determines its assignment. (See Third Division Awards 19318 and 19525).

In further defense of its actions, Carrier argues that the Organization's employees have never exclusively installed signal decks/walkways/platforms. The Board notes that the instant claim does not involve a work assignment dispute between different crafts or classes of Carrier employees; it concerns the Carrier's use of an outside contractor. The Board has consistently held that, in contracting claims, the Organization need not demonstrate its employees have exclusively performed the work at issue. Third Division Award 32862 ("...exclusivity is not a necessary element to be demonstrated by the Organization in contracting claims."); Award 19 of PLB 7980 ("...the exclusivity doctrine is inapplicable when a claim is against outside contractors."); Third Division Award 13236 ("...The exclusivity doctrine applies when the issue is whether Carrier has the right to assign certain work to different crafts and classes of its employees - not to outsiders.").

Given the particular facts and circumstances in the record before us, the Board finds that the foundation installation and the construction and/or installation of the signal platform at the 395.12 signal location is work covered by the parties' Scope Rule,

and the Carrier has failed to justify its assignment of said work to an outside contractor. Therefore, we find the Agreement was violated.

That determination made, we turn our attention 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 installing the signal foundation and constructing and/or installing the supporting signal platform at the 395.12 signal location. 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 30<sup>th</sup> day of May 2025.