

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45524
Docket No. SG-48029
26-3-NRAB-00003-230534

The Third Division consisted of the regular members and in addition Referee Daniel F. Brent when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of B.M. Baker, D.S. Bonewell, P.C. Clayton, S.R. Glover, and M.B. Jolly for 240 hours each at their respective time and one half rates of pay; account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on July 14–16, 18–19, and 21, 2022, Carrier permitted contractors (SNC) to set signal foundations at multiple locations on the Pine Bluff Subdivision, thereby causing the Claimants a loss of work opportunities.

Carrier's File No. 1778720, General Chairman's File No. S157-SR-343, BRS File Case No. 6208, 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.

The instant grievance alleges that the Carrier improperly assigned bargaining unit work, more particularly installing metal foundations for a signal cabin on the

Jezreel Valley Branch, to an outside contractor in violation of the Scope Rule Section 5(V), which provides in relevant part that the bargaining unit represented by the Brotherhood of Railroad Signalmen has jurisdiction to perform “carpentry, painting, concrete, and formwork of all classes in connection with installing, repairing, or maintaining signal relay housing, crossing flashers and gates, interlocking or retarding retarder systems, apparatus, or device, (excluding the erection and maintenance of buildings or precast foundations purchased from manufacturers).”

The Organization’s grievance is predicated on the language of the Scope Agreement requiring that signal related work be performed by bargaining unit employees and an explicit exclusion from building structures that rest on precast supports.

“This agreement governs the rate of pay, hours of service, and working conditions of employees in the Signal Department who construct, install, test, inspect, and maintain or repair the following (1b) signals and signal systems, including inoperative signals and train order signals, automatic cab signal, including equipment, including portions on motive power and rolling stock. Paragraph 5(V) explicitly excludes the erection and maintenance of buildings.”

Photographic evidence submitted by the Organization depicts large 6 to 8-foot-long metal screws that were inserted into the ground by a contractor using a specialized boom mounted on a truck bed and thereafter placing both the platform and the signal cabin onto the support floor supported by the metal screws. The record does not reflect that the parties limited the material of the precast supports to concrete supports. However, the depicted work was neither pre-cast concrete work nor the erection or maintenance of precast foundations purchased from manufacturers. The Carrier has not demonstrated persuasively by a preponderance of the evidence that the metal screws should be deemed sufficiently analogous to “precast supports” to fall under the exclusion created for “precast foundations.” Thus, the first sentence of the Scope Rule applies to the disputed work.

The Organization contends that installing the metal stanchions that support a signal cabin intended to house signal equipment fell within the reservation of such work to bargaining unit employees under the Scope Rule. The Organization persuasively asserted that the Carrier could have, and should have, rescheduled this work for the Grievants, who were available and competent to perform the work, rather than

assigning the work to an outside subcontractor. The Organization correctly asserted that the exclusivity rule cited by the Carrier does not apply in the instant case because the dispute was not between different groups of Union Pacific employees seeking to perform the same work, but between bargaining employees and an outside contractor for jurisdiction over the disputed work.

The evidentiary record includes photographs of radio and fiber equipment installed by Signalmen in the cabin at issue. The presence of signal equipment installed in the cabin was sufficient under the Scope Rule to confer bargaining unit jurisdiction over installing the supports upon which the cabin was situated, provided that the explicit exception in the Scope Rule for “erection and maintenance of buildings or precast foundations purchased from manufacturers” does not apply.

The Carrier’s Director of Signal Construction contended that, “The claimed work was part of a complete foundation system that included a platform system that would [serve] in place of constructing a retaining wall and berm.” Thus, the Carrier argued, the bargaining unit had no claim over the work because, “as the Organization is well aware, construction of pads or berms and retaining molds along the right of way where signal houses or other signal equipment is placed is not exclusive work to signal employees.” However, the Carrier has not demonstrated that, “This type of work has been done by various crafts and contractors across the Carrier system”. Thus, the evidentiary record convincingly supported a finding by this Board that the disputed subcontracting did not involve the erection or maintenance of a building or use of a precast foundation purchased from a manufacturer.

The Carrier failed to provide sufficient evidence to support its contention that the disputed work involved the erection or maintenance of a building or use of a precast foundation purchased from a manufacturer. The term “precast” clearly implies a concrete element that is inserted in the ground without pouring fresh concrete. The metal screws presented in evidence were produced by a manufacturer, as are all building materials, and required nothing further than to twist them into the ground with an oversized driver attached to a truck. Nothing in the record justifies defining the large metal screws as a precast support satisfying the Scope Rule exception.

The record did not demonstrate that specialized tools were essential to insert the support screws into the ground or that such specialized equipment was not owned by, or readily available to, the Carrier. Neither can the Carrier’s assertion that, “the work of constructing a platform that is used to support a mixed-use facility that serves the

same exact purpose of the retaining wall and berm” establish that the disputed work would fall outside the scope of the agreement as would a precast foundation purchased from a manufacturer. Thus, the pivotal issue is whether the cabin sitting on prefabricated metal screws should be considered a building. Rather than a permanent structure sitting on a specially constructed permanent foundation, the signal cabin is really a large metal cabinet, not a structure permanently fastened to a permanent foundation in the ground.

The better interpretation is that it is a very large cabinet on a metal platform rather than a small permanent building affixed to the ground. Consequently, the exclusion for construction or maintenance of buildings does not apply. That signal equipment will share the new signal cabin with other communication systems is not dispositive. The Carrier’s argument failed to establish a valid basis to take away work reserved for Signalmen, who have the skill and ability to perform this work regarding signal cabins and are thus entitled to the disputed work unless the exclusion applies. The Organization established persuasively that any requirement that a civil engineer design the project does not preclude bargaining unit employees exercising their skill and equipment to fulfill the specific design created by the civil engineer. Thus, this argument does not defeat the Organization's claim.

The Organization has established by a preponderance of the evidence that the metal screws installed as supports for a metal platform on which a signal cabin will be installed on the date and time shown in the evidentiary record violated the Scope Rule and thus deprived the aggrieved employees of work. The Organization is entitled to perform the work of installing all signal equipment as set forth in the first sentence of the Scope Rule. That there may have been other mixed-use of this facility does not negate the Organization’s superior claim to perform the installation of the cabinet relative to employees of an outside contractor. Consequently, the instant claim must be granted. The appropriate remedy must be limited to compensate for the number of hours actually spent by contractor employees performing bargaining unit work at this site on the days cited in the claim, rather than the unsubstantiated number of hours cited by Claimants in their grievance.

Claim granted for the actual number of hours spent by contractor employees performing bargaining unit work at this site on the days cited in the claim.

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 27th day of January 2026.