

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45533
Docket No. SG-48432
26-3-NRAB-00003-240155

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 A. Birdsong, B. Hoolihan, B. Phillips, and C. Powell, for 280 hours at their respective rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly, the Scope Rule, when, on April 11, 2023, it utilized two contractors from Greis Construction to perform the scope-covered work of constructing a berm, retaining wall, and installing a signal cabin at M.P. 17.9 on the Chester Subdivision, thereby causing the Claimants a loss of work opportunity. Carrier’s File No. 1787713, General Chairman’s File No. S72-SR405, BRS File Case No. 6512, 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 Carrier erroneously cited the exclusivity doctrine, asserting that because the disputed work involved a multi-use cabin housing both signal devices and telecom

devices, the Carrier need not have assigned this work to employees represented by the Organization. The instant claim does not allege that the BRS has superior entitlement to perform the disputed work relative to another bargaining unit of Union Pacific employees. The Organization correctly contends that the BRS bargaining unit has priority under the Scope Rule over any outside contractor and thus the Carrier violated the parties' Agreement by assigning this work to a contractor. The Carrier did not establish persuasively by a preponderance of the evidence that the assignment of similar projects to contractors in the past created a waiver by the Organization that would bar a claim to the disputed work in the instant case. Neither has the Carrier established persuasively that the circumstances of the instant claims fall within the exception for berm and foundation construction articulated in Scope Rule 5.

Perhaps if the disputed work were comprised only of berm construction, the Carrier's denial of the claim would be more persuasive. However, the element of installing a signal cabin precludes treating the disputed work at Milepost 17.9 on the Chester Subdivision on April 11, 2023 as satisfying the prerequisites for the explicit exception for berm and foundation construction expressed in the Scope Rule.

Therefore, based on the evidence submitted the Carrier violated the parties' Agreement, specifically the Scope Rule, by assigning the disputed work to an outside contractor on April 11, 2023. Therefore, the claim must be sustained.

Claim sustained based on the Findings. The Carrier shall pay Claimants A. Birdsong, B. Hoolihan, B. Phillips, and C. Powell, for 70 hours each at their respective straight-time rates of pay for lost work opportunity in connection with their claim.³

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.