

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13683
Docket No. 13472-T
02-2-99-2-68**

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

(International Brotherhood of Electrical Workers
(System Council No. 16
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. That the UP erred and violated the current Agreement, in particular, but not limited to, Rule No. 107(a), when a Signal Foreman and Signal Supervisor were allowed to perform “Electricians’ Work” on or about June 22, 1998 through on or about July 24, 1998, thereby depriving Electrician Ronald W. Zimmerman of the opportunity to perform his work.
2. That accordingly, the UP be ordered to compensate Electrician Ronald W. Zimmerman seven hundred twenty (720) plus two hundred twenty four (224) hours at his overtime rate of pay.”

FINDINGS:

The Second 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.

As Third Party in Interest, the Brotherhood of Railroad Signalmen was advised of the pendency of this dispute and chose to file a Submission with the Board.

The Organization asserts that the Carrier improperly assigned to BRS-represented employees the installation of electrical power services (primary voltage power) including meter loops at various mile posts on the dates set forth in the claim. The Carrier (joined by the BRS) defended the assignment on the grounds that under their Scope Rule, BRS employees install and maintain all signal equipment and the meter loops they were assigned to install were part of the signal equipment.

The Organization bears the burden to demonstrate a violation of the Agreement. In this kind of case, that burden requires that the Organization show that it has performed the disputed work on a system wide, exclusive basis.

The Organization cannot meet its burden.

For the sake of discussion and to give the Organization the benefit of the doubt, we will assume that the Claimant and other Electricians have performed this type of work in the past. But, in this case, that is not enough for the Organization to prevail. Aside from the fact that the BRS Agreement defines the assigned work as scope covered (“[h]igh tension or other lines of the Signal Department, overhead or underground, poles and fixtures, conduits, transformers, arrestors and distributing blocks, track bonding, wires or cables, pertaining to railroad signaling, interlocking, and other systems and devices listed . . .”), the record shows that BRS represented employees have performed similar work in the past. Engineering Supervisor M. L. Pipkin states that “[i]t was signal employees that installed the meterloops on the laredo sub” and that it “. . . has been the pass [sic] practice of the signal dept. to install meterloops for our new installations for 28 years. . . .” Signal Foreman R. P. Patterson similarly states that from 1967 to 1991, “. . . the installation, maintenance, repairs, restoration and testing of all power related to signals or equipment . . . has been the Signal dept. and B.R.S. responsibility. . . .” Signal Foreman R. J. Reynolds states that in his 29 years “. . . this work has been performed by Signal Department employees . . .” and “. . . our gang has built and installed power poles in crossing and signal houses throughout or [sic] area . . . [m]any times I personally have been called out to power problems at a location and repaired power drops or whatever interrupted commercial power at the work site.”

At most, there is a mixed practice concerning the assignment of this kind of work in that the Carrier has assigned this work to employees represented by the Organization and the BRS. But a record establishing the existence of a mixed practice is insufficient to meet the Organization's required burden of demonstrating that employees it represents performed this work on a system wide, exclusive basis.

See also, Public Law Board 2766, Award 206 between the parties:

"The record before us reveals that primary power installation is done by both IBEW and BRS employes. The record supports the notion that if the power obtained is to be used for the operation of the Signal System, Signalmen are assigned the work of installing the power drops. That point went unrefuted throughout the proceeding in this matter. Carrier did not violate the IBEW Agreement by assigning Signalmen to install power drops to new signal locations."

That Award supports the Carrier and the BRS. We cannot find that Award to be palpably in error.

The Organization has not met its burden. We shall therefore deny the claim.

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 Second Division

Dated at Chicago, Illinois, this 24th day of April, 2002.