

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13118
Docket No. 13021-T
97-2-95-2-48

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Railroad Company did violate the controlling agreement dated April 1, 1983, in particular Rule 26(a) and Rule 50(a), Sections 1, 2 and 6, when on February 9 and 10, 1994, Carrier wrongfully assigned employees of the Signal Department to perform work on AFE 93-1568 in Lemmon, South Dakota, belonging to the electrical crew at Mandan, North Dakota, per claim letter dated April 5, 1994, and;
2. That accordingly, the Burlington Northern Railroad Company should be ordered to compensate Mandan electrical crew members, D.L. Aeschliman, Dennis Carpenter, Ted Hulm, and Damon Bruce for 32 hours of straight time pay at the rate of \$15.625 per hour, for a total of \$500.00 to be divided equally among the crew members.”

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 ("BRS") was advised of this claim and has provided a Submission in response thereto for the Board's consideration.

On February 9 and 10, 1994, the Carrier assigned a Signal Crew to install feeder wires from the disconnect below the meter main to the Crossing Bungalow (Equipment Building) at Lemmon, South Dakota. Additional wiring was also performed in conjunction with the signal work at the Lemmon site.

The Board, in its many rulings on issues such as this, has established that the burden of proving the essential elements of a claim rests with the moving body, in this case, the Brotherhood of Electrical Workers ("IBEW").

The Organization must show that the disputed work is reserved to its craft by the provisions of the Parties' Collective Bargaining Agreement. It has not met this burden.

On the other hand, the Board finds that the BRS Scope Rule of September 1, 1972 applicable to the facts of the case. It provides as follows:

"SCOPE"

This agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, reconstruction, reconditioning, installation, reclaiming, maintenance, repair, inspection and tests, either in the signal shop, or in the field of the following:

A. All automatic block signals and signal systems, traffic control systems, train stop and train control systems; interlocking; cab signal systems; car retarder systems; highway railroad grade crossing protection systems; hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, flood or other similar detector systems; train order signals; take siding, call on, start or dwarf signals, power and electrically locked switches, spring switches, tract occupancy indicators, and car

counting devices connected to or through automatic block or interlocking systems.

B. All appurtenances, devices and equipment used in connection with the systems cited in Paragraph A, regardless of where located and how operated, and devices covered by the scope of this agreement, as well as any other work generally recognized as signal work.

C. High and low voltage signal lines, overhead and underground including poles, cables, cross arms, wires, insulators, guy wires, messenger cables, rings, and other fixtures and equipment used on connection therewith, conduits and conduit systems, transformers, arresters, and distributing blocks used in connection with the systems; devices, or equipment covered by this agreement; inside and outside wiring of all instrument houses, cases, panels, boards, as well as all cable, where used in connection with the systems, devices, and equipment covered by the scope of this agreement; track bonding, installation of all types and kinds of bonds, including lightning and static electricity bonding; lighting of all instrument houses, cases, panels, boards, etc., used in the systems and devices covered by the scope of this agreement, not including the general lighting of interlocking tower buildings, shop buildings and common headquarter buildings. (Emphasis added)

The disputed work involved the installation of equipment below the electric service meter. This work was specifically addressed by the Carrier and the Signalmen in a Letter of Understanding, dated August 24, 1972, in paragraph 12 which provided that: "The installation and maintenance of the necessary electric service to the disconnect below the meter is covered by the Scope of this Agreement."

However, the evidence shows that the disputed work was necessary for the signal system. This matter was clearly addressed in Third Division Award 30108, dated April 4, 1994 (LaRocco). The issue leading to Award 30108 was settled under a similar Scope Rule. It in pertinent part stated:

"This Board concludes that the disputed work is expressly described in the Scope Rule. The Rule provides that agreement covered employees shall perform the 'installation' of 'highway crossing protection devices'

and 'their apparatus and appurtenances.' The conduits placed under the two roads were used exclusively to carry signal circuits for grade crossing protection devices. The pipes served no useful purpose to the Carrier absent their appurtenant relation to the signal system and, thus, it is work expressly reserved to signalmen by the Scope Rule. Third Division Award 12697. Stated differently the conduit was integral to the installation of highway protection devices. (Emphasis added)

We find that the electric power and distribution equipment, at issue in this case, was an appurtenance to the signal system. For all of the foregoing the claim is denied.

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 6th day of May 1997.