

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13122
Docket No. 13051-T
97-2-95-2-74

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 did violate the controlling Agreement, dated April 1, 1983, in particular Rule 50(A) Sections 1, 2, 5 and 6 and Rule 26 when on March 5, 1994 the Carrier wrongfully assigned an employee of the Signal Department to perform work in West Taylor, North Dakota belonging to Electrician Dennis Carpenter of Mandan, North Dakota, per claim letter dated April 5, 1994 and;
2. That accordingly, the Burlington Northern Railroad should be ordered to compensate Mandan Electrician Dennis Carpenter for eight (8) hours of straight time pay at the rate in effect on March 5, 1994.”

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 a Third Party in Interest, the Brotherhood of Railroad Signalmen ("BRS") was advised of the pendency of this dispute and it has filed a response with the Board.

This claim arose after an employee of the Carrier's Signal Department removed, repaired and re-installed a heater unit in the signal bungalow at West Taylor, North Dakota.

The Organization has the burden of proof to establish that the work of removing, repairing and installing electric heaters in signal bungalows on the former Northern Pacific ("NP") territory is reserved exclusively to the electrical craft.

Burlington Northern ("BN") was created by the merger of the NP and other railway companies in 1970. The respective Agreements with the IBEW and BRS preserved pre-existing rights on predecessor railroads prior to their merger in the present BN. Accordingly, the Organization has the burden to show that the Agreement language specifically conveys the work at issue to its craft. Or, in the alternative, it may also show that the work has been historically and exclusively performed by its craft on a system-wide basis.

The work here involves electric heaters in signal bungalows on the former NP. We find from the record that the basic purpose of these electric heaters is to protect batteries from freezing and to maintain an adequate temperature for the protection of signal equipment.

The Signalmen's Agreement on the former NP includes the following language: "Carrier equipment used exclusively in signal systems." The current Signalmen's Scope Rule, in pertinent part, reads "all appurtenances, devices and equipment used in connection with the systems cited in Paragraph A, regardless of where located and how operated." Accordingly, the Board concludes that the IBEW must show that it performed the disputed work exclusively on the former NP prior to the date of the merger.

To support its contention that it had exclusively performed the work, the Organization provided a letter, dated December 11, 1994, from an Electrical Foreman. The Board finds that this does not rise to the level necessary to show exclusivity. In this

respect, it is noted that the Foreman in his letter stated that in "some of the signal maintainer territories" electricians removed and repaired electrical heaters (emphasis added). Therefore, the Foreman, by his statement, did not show, or was there any other evidence in the record, that the Electricians had performed the work on an exclusive basis.

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.