

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13321  
Docket No. 13048-T  
98-2-95-2-70

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

(International Brotherhood of Electrical Workers  
( System Council No. 16  
**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, when on November 24, 1993 it was discovered that the Carrier wrongfully assigned Employees of the Signal Department to perform work in Herbon, Lehigh, Taylor and Dickinson, North Dakota, belonging to the Electrical Crew at Mandan, North Dakota, per claim letter dated December 3, 1993, and;
2. That accordingly, the Burlington Northern Railroad Company should be ordered to compensate Mandan Electrical Crew members D.L. Aeschliman, D. Carpenter, T. Hulm, D. Jakela and D. Bruce for 12.8 hours each of straight time pay at the rate of \$15.625 per hour, for a total of \$200.00 for each Claimant.”

**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.**

**On December 3, 1993, the Organization filed a claim which contends that the Carrier violated Rule 50, the Classification of Work Rule of the Agreement, when it assigned employees of the Signal Department to wire switch heaters at four separate locations in North Dakota, during September, October and November 1993.**

**While certain procedural issues have been raised on the property, the Board concludes that the claim is best settled on its merits, although one procedural item merits comment and resolution. Specifically, the Organization contends that employees involved in performing the type of work as at issue in this claim must possess a State license. Additionally, the Organization maintains that OSHA regulations and requirements must be followed.**

**We follow a line of Awards in this industry, holding that it is not a proper function of this Board to interpret the statutes of a State. (See, among others, Second Division Award 12395). Moreover, similar arguments as made here concerning State law and OSHA requirements were presented and rejected by Second Division Award 13122.**

**Turning next to the substantive elements of the claim, a historical perspective is instructive and necessary for its resolution for reasons that will become clear later on.**

**At the time of this claim, the organizational components of the Carrier consisted of the former CB&Q, NP, GN and SP&S Railway Companies. The actual merger of these separate railroad entities occurred in 1970. Both Organizations now involved in this dispute, the International Brotherhood of Electrical Workers (IBEW) and the Brotherhood of Railroad Signalmen (BRS), executed preservation of work agreements with the Carrier which preserved pre-existing rights as they existed on the former properties (noted above) prior to the date of the merger in 1970. Accordingly, the threshold questions focus on (1) the kind of work the represented Parties' Scope Rules**

preserved for each of these Organizations, and (2) whether events subsequent to the 1970 merger impacted on these rights.

The IBEW must show that its Rule 50, Classification of Work Rule ("Scope Rule") specifically grants the dispute work to its craft. Alternatively, it can sustain its case by a showing that the disputed work has historically and exclusively been performed by its craft on a system-wide basis.

During the on-the-property handling of this claim, it was made a matter of record that employees represented by the BRS have performed the disputed work on the former NP territory, the territory involved in this claim. Accordingly the IBEW has not performed the work on a system-wide basis.

With respect to the IBEW Scope Rule, it refers to the work of installing switch heaters, as does the BRS Scope Rule. Therefore, to prevail here, the IBEW has the burden of showing that the work of installing switch heaters was performed exclusively by IBEW Electricians on the former NP territory prior to the 1970 merger and that the BRS had no pre-existing rights to the work. This burden has not been met.

Rule 50(a)7a. reads:

"It is not the purpose of this rule to expand jurisdiction but only to revise and to update the work being performed by the Electrical Engineering workers."

Rule 63(c) provides:

*"(c) It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN, SP&S and Frisco railroads prior to the dates of the individual mergers; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of the merger."*

The Note to Rule 1, Scope of the BRS Agreement contains similar language, preserving existing rights.

**The Board urges the Parties to now put this issue to rest. In this respect, this Award follows other Awards, to name only a few, which have addressed the same or similar issues and have reached the same holdings. (See, for example, Second Division Awards 6867, 8000, 8442, 13122 and 12118.**

**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 16th day of September 1998.**