

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32918
Docket No. SG-32346
98-3-95-3-191**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of W. A. Smith Jr. for payment of 26 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than employees covered by the Agreement to perform the covered work of installing an electrically controlled switch with switch lamps at mile post 7.0 at Turner, Kansas on March 18, 1994, and deprived the Claimant of the opportunity to perform the work. Carrier's File No. 94-14-18. General Chairman's File No. 01-1216. BRS File Case No. 9560-ATSF."

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.

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

On March 18, 1994, the Carrier utilized an outside contractor and Maintenance of Way forces to install certain equipment at Mile Post 7.0 at Turner Kansas. This claim followed with the Organization asserting that employees covered by the Signalmen's Agreement should have performed the work.

The Organization claims the work is scope covered and describes the equipment as an electric hydraulic switch machine which includes switch lamps which is connected to, and when operated activates conventional signal appurtenances and appliances resulting in the activation of the CTC signal system. The Carrier disagrees and describes the work performed as the replacement of a hand throw switch stand with an electric switch which can be thrown by the Switchman and instead of moving a lever, a button is pressed with the result that instead of a target moving to indicate switch position, lamps are lit, which lamps do not indicate the position of the switch point as in a signal system, but only indicate the position of the electric switch throw. Third party Maintenance of Way essentially agrees with the Carrier's description of the work as the removal of a manually thrown switch stand and the installation of an electrically controlled switch mechanism.

The burden in this case is on the Organization to demonstrate that the work in dispute was covered by the scope of the Signalmen's Agreement. That burden requires a definitive showing that the equipment was signal system related and connected to or through the signal system. The Organization argues that the equipment was so connected while the Carrier and Third Party Maintenance of Way assert the opposite. When viewed as a whole, the record is in dispute with respect to the function of the equipment. Based on what is before us, both positions are well presented and are in dispute. However, that dispute cannot be reconciled. Based on the demonstrations made in this record, the Organization's burden has not been carried. The claim must be denied.

AWARD

Claim denied.

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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 Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.