

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35027
Docket No. SG-34949
00-3-98-3-693**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago and
(North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (former Chicago & North Western):

Claim on behalf of J. H. Spiegel for payment of three hours at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 2 and Appendix A, when it used a District Signal Foreman to perform installation work for the signal system at M.P. 231.66 on July 3, 1997. Carrier’s File No. 1090404. General Chairman’s File No. K-AV-014. BRS File Case No. 10623-CNW.”

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.

On August 18, 1997, the Organization filed a claim on behalf of the Claimant, contending that the Carrier violated the current Signalmen's Agreement, particularly Rules 1, 2(g), and Appendix A, when, on July 3, 1997, at Main Street, Moorland, Iowa, M.P. 231.66, Tara Subdivision, the Carrier allowed and/or permitted District Signal Foreman J. W. Braden to perform routine signal maintenance. The Organization maintains that the work performed by Braden was neither incidental to nor as a consequence of his duties as a supervisor because he was alone when he performed the work. The Organization therefore argues that the Carrier should be required to compensate the Claimant for three hours at his straight time rate. The Organization maintains that, on the date in question, Braden hauled signal material, a motion detector surge arrestor, and a PMD island receiver module to Main Street, Moorland, Iowa, for the Claimant's use in his maintenance duties. The Organization contends that Braden then went ahead and placed the said items in service causing lost work opportunities for the Claimant, who should have been allowed to do the work during his routine maintenance and testing of the signal crossing. The Organization contends that Braden was assigned to a construction position and not maintenance forces.

The Carrier denied the claim. It argues that the location in question was installed by construction forces in late June 1997 and that it was later determined that one island board on one MDSA unit was defective. As a result, the Carrier contends that when the construction forces received the repaired equipment, Braden was sent to Moorland to install it during normal working hours. The Carrier acknowledges that the Claimant was working at the time, but Braden installed the equipment and the Claimant was compensated for work being done elsewhere on his territory. The Carrier argues that the work in question was that of completing the construction work done in late June 1997 and the proper person was used to perform the installation. The Carrier contends that there was no other competent Signalman available and that the work done was in completion of construction, not maintenance. The Carrier argues that the Organization has shown no past practice of Maintainers performing construction work.

The Board reviewed the record in this case and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it used a District Signal Foreman to perform installation work for the signal system on July 3, 1997. There is no question that the District Signal Foreman did the work. However, it was construction work, not maintenance work, and the three hours of work had to be performed in rather immediate fashion. There was a defective island board and an

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MDSA unit that had to be replaced as part of a construction project. The Organization cited nothing in the Agreement that prevents the Carrier from assigning a District Signal Foreman from performing that work.

Because the Organization failed to meet its burden of proof that the Carrier violated the Agreement, the claim must be 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 Third Division**

Dated at Chicago, Illinois, this 25th day of October, 2000.