

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35748  
Docket No. SG-35717  
01-3-99-3-689**

**The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Grand Trunk Western Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad (GTW):**

**Claim on behalf of Brother J.M. Brasseur, for payment of two hours and 40 minutes at his time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used a non-covered employee to make repairs to a crossing warning device located on the Claimant’s territory, at Calumet Avenue in Munster, Indiana, on April 30, 1998. Carrier’s File No. 8390-1-116. General Chairman’s File No. 98-61-GTW. BRS File Case No. 10950-GTW.”**

**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 the date of this claim, the Claimant was regularly assigned to a position of Signal Maintainer with headquarters at Valparaiso, Indiana. On that date, he performed service on his regular assignment. The penalty claim as initially presented on his behalf by the Organization reads as follows:

“The instant dispute was triggered on April 30, 1998, when C. Fowler, who is not covered by the Signalmen’s Agreement, made repairs to the highway crossing warning device located at Calumet Avenue in Munster, Indiana. The device in question is located on claimant’s territory and repairs to the device are part of his regular assignment.”

At all stages of on-property handling and before the Board, the Carrier denied the claim on the basis that no repairs were made by anyone to the highway crossing device at the location in question.

There is nothing found in the case file to indicate that the Organization at any time offered even a scintilla of probative evidence to support its allegations. Assertions are not proof. Therefore, the Organization failed to carry its burden of proof that a Rule violation did, in fact, occur and the claim as presented 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 Third Division**

**Dated at Chicago, Illinois, this 24th day of October, 2001.**