

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36553

Docket No. SG-36355

03-3-00-3-565

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: (

(Union Pacific Railroad Company (former Chicago &
(Northwestern C&NW)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of D. J. Zimmerman for payment of two hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix A, and Article I of the February 1, 1983, Memorandum of Agreement, when on May 11, 1999, it allowed a District Signal Foreman to perform signal work of operating a short finder at the turnout switch at M.P. 151.6, in Marshalltown, Iowa, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1200968. General Chairman's File No. 9cma9659.2. BRS File Case No. 11300-C&NW.”

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.

The record of this case clearly establishes that for several days prior to the claim date there had been numerous instances in which the crossing warning system at the location in question was activating for no apparent reason. The Signal Maintainers assigned to this territory had repeatedly inspected and tested, but had not been able to locate the specific source of the malfunction. The District Signal Foreman, whose territory included the trouble area, eventually discovered the root cause of the trouble and arranged to have the malfunction corrected by the regular assigned Signal Maintainers. The claim as presented alleges that the actions of the District Signal Foreman somehow violated the rights of the Signal Maintainers.

The applicable Scope Rule contains the following definition:

“District Signal Foremen will supervise the work of employees of lower classifications in their districts, and shall perform work coming within the scope of Signalmen’s Agreement effective January 1, 1982, when incidental to, or as a consequence of their duties.”

It is acknowledged by the Organization that a District Signal Foreman is a member of the Signalman’s craft. However, it contends that the testing work which the Foreman performed in this case to locate the cause of the problem was not “incidental to or as a consequence of (his) duties.” With this contention the Board does not agree.

It is well established that where there is a challenge between employees of different classes of the same craft, the burden of proving exclusivity of performance rests heavily on the Petitioner. This principle was clearly enunciated in Third Division Award 22761 where we read:

“It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of others. This Board has also found that when there is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner (Awards 13083 and 13198).”

The facts of record show that the Signal Maintainers had repeatedly been unable to locate the cause of the malfunction. The Foreman went to the problem site to ascertain why the Maintainers could not find the problem. He found the problem and arranged to have the Maintainers fix the problem. This is what a Foreman does. There is no showing in this case record that the Foreman exceeded his authority or responsibility. Neither is there any showing that Signal Maintainers have the exclusive right to perform all forms of testing to the exclusion of the District Signal Foreman. All service which was performed in this case was within the four corners of the Agreement.

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 8th day of May 2003.