

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37108
Docket No. SG-36989
04-3-01-3-593

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link (MRL):

Claim on behalf of G. J. Fritel for 4 hours at the time and one-half rate. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when on November 23, 2000, Carrier allowed a non-covered employee to perform covered work on the Claimant’s assigned territory. The work consisted of determining the cause of the track occupancy light and replacement of a broken rail. Carrier’s action deprived the Claimant of the opportunity to perform this work. General Chairman’s File No. 01-009-MRL-87-B. BRS File Case No. 11805-MRL.”

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 facts of the instant matter do not appear to be in dispute. At approximately 8:00 A.M. on Thanksgiving Day, November 23, 2000, a Train Dispatcher was alerted to a "BK" track indication on the signal system covering the line of road between Greycliff and Big Timber, Montana. When displayed at the Train Dispatcher's workstation, a "BK" track indication normally means that a train is occupying the track. In this case, there was no train in the area, meaning there could be a broken rail or a broken track wire. The Train Dispatcher contacted Roadmaster T. Benson who immediately responded by patrolling the track between Greycliff and Big Timber.

Upon discovering a broken rail at Milepost 77.4, Roadmaster Benson called BMW track forces to repair it. Upon completion of the track repair, the "BK" track indication cleared and the signal system resumed proper functioning. The following workday, Signal Maintainer G. Fritel, whose position covered the involved territory, was dispatched to reinstall bond wires on the newly repaired track.

By letter dated January 6, 2001, the Organization submitted its claim seeking four hours at the time and one-half rate of pay on behalf of Fritel alleging violations of Paragraphs A, B and C of the Scope Rule. The Organization alleged that Fritel should have been called to investigate the problem rather than Roadmaster Benson and that Fritel should have been called in to complete the repairs undertaken by the BMW track forces.

Thus, the issue in the instant case is whether the Carrier erred when it sent Roadmaster Benson rather than Signal Maintainer Fritel to investigate the matter. We note that the burden of proof in this matter is on the Organization to show that the Carrier erred when it assigned Roadmaster Benson rather than Signal Maintainer Fritel.

The Carrier takes the position that on November 23, 2000, a failure of the signal system occurred, which can in no way be considered as interference of the signal system. The Carrier asserts that the Organization produced no tangible evidence to support its assertions. Roadmaster Benson properly found the broken rail and arranged for it to be repaired. The Claimant repaired the signal circuits

the following day. Further, the Carrier asserts that the Organization is seeking compensation for work that was not done. According to the Carrier, the negotiated Agreement contains no provision that entitles the Organization to that which it demands.

After a review of all evidence, the Board finds that it must agree with the Carrier. The burden of proof in this matter falls on the Organization to prove that the Carrier should have assigned the Claimant to investigate the matter. In Third Division Award 36078 the Board held:

"A review of the case record reveals that no signal work was performed on the date in question and no other employee was used to perform any work which accrued to Signalmen.

This dispute is asking for compensation for work that was not done and the remedy sought is for compensation for some work that could or should have been done. Rule 25 of the negotiated Agreement contains no such provision or requirement. There is no basis on which to support the claim. Therefore, it is denied."

See Also Third Division Award 32725.

In the instant case, the Organization has been unable to meet its burden of proof. Thus, 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 25th day of August 2004.