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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37211
Docket No. SG-37823
04-3-03-3-187

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of G. C. Neely (3 claims), W. L. Duncan (1 claim), R. W. Johnson II (2 claims) and G. E. Lego (1 claim). Each claim is for two hours and 40 minutes at the time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed BMW employees and train crew employees to remove snow and ice from the power operated switch points to clear the reported switch failures. The violations occurred on January 6, 2002, at Backus, WV., January 7, 2002 at Gauley, WV., January 19, 2002 Kanawha Falls, WV., January 19, 2002, Backus WV., January 19, 2002, Sewell, WV., January 19, 2002, Backus, WV., and January 19, 2002, Pince, WV., on the Hinton District of the former C&O Railway. The Claims are represented in BRS File: 02-44-CD; and Carrier File: 15-02-(008400090). As a result of the violation the Claimants were deprived of the opportunity to perform this work. Carrier's File No. 15-02-(0084 – 0090). General Chairman's File No. 02-44-CD. BRS File Case No. 12633-C&O(CD).”

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.

At all relevant times herein the Claimants were employed by the Carrier as Signal Maintainers responsible for the maintenance of switches on the Carrier's Hinton District. On various dates in January 2002, as set forth in the Statement of Claim, the Carrier allowed BMW-represented employees and members of train crews represented by the UTU to remove snow and ice from switches that did not respond to the Train Dispatcher's controls. The record reflects that the employees who performed the work were already at the site and available to complete the work.

The Organization contends that when removing snow and ice or other foreign matter from switches is done for the purpose of ensuring the proper operation of signals, that work accrues to employees represented by the Organization. Under circumstances different from that of the instant case, we might find ourselves in agreement with the Organization. However, the record clearly reflects that the work in question in this case did not become necessary because snow and ice on the switches caused a malfunction, but rather only because the employees to whom the work was assigned were already at the site and available to perform the work in question. Thus, we believe that this case can be distinguished from that where a power failure had occurred and find that the claim is without merit.

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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 28th day of September 2004.