

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37245
Docket No. SG-36800
04-3-01-3-343

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railway Company (former Burlington Northern Railroad):

Claim on behalf of G. A. Hastings and R. J. Qual for 28 hours each at the time and one-half rate plus Skill Differential pay equivalent to \$0.85 per hour for 28 hours each. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Rules 15 and 45E, when on April 24, 2000 Carrier used outside forces (Ernst Trenching Co.,) to install conduit and conduit systems under the main track at both MP 21.90 and MP 41.6 in Moorhead, MN. Carrier's action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 34 00 0021. General Chairman's File No. TC-17-2000. BRS File Case No. 11750-BN.”

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 reflects that on the material dates herein the Carrier utilized the services of an outside contractor that used hydropower technology to bore under tracks at MP 21.90 and MP 41.6 at Moorehead, Minnesota. The purpose of the work was to install conduit without trenching across the area. The Organization contends that such work is maintenance work and that the Carrier violated the parties' Scope Rule when it did not assign that work to the Claimants. The Carrier, on the other hand, contends that the work in question has been the subject of prior Third Division Awards that have held that because "boring" is not listed in the otherwise precise and thorough listing of work in the parties' Scope Rule, it is not work that must be assigned to the bargaining unit.

In Third Division Awards 24538, 32796, and 34169, on the same property and involving the same parties, the Third Division has held that the parties' Scope Rule has a specific listing of the type of work included within its terms and that the listing therein does not include boring. Thus, the holding in those cases was that the claims must be denied. The only argument to the contrary and put forth herein by the Organization, is that the language of the Scope Rule changed since those decisions were rendered. The Organization is indeed correct that the parties have since revised their Scope Rule, but the differences between the current language and the prior language is a difference without a distinction. That is, the current language is still and perhaps even more, specific and still does not include within its terms boring. Thus, the rationale relied upon by the prior Third Division Awards remains applicable and we so hold.

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 27th day of October 2004.