

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37292
Docket No. SG-36951
04-3-01-3-553

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
(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 Railroad Co. (former Burlington Northern Railroad):

Claim on behalf of D. E. Malone, M. J. Spah and C. C. McQueen for 60 hours at the straight time rate to be equally divided among the Claimants. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when on July 18, 2000 Carrier used outside contractors to remove old cable and copper wire from the pole line on the Brookfield Subdivision (MP 182.3 to MP 183.5) in Avalon, Illinois. Carrier’s action deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 34-00-0030. General Chairman’s File No. C-27-2000. BRS File Case No. 11751-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 Claimants were assigned as Signal Foreman and Signal Maintainers when, on the day in question the Carrier used an outside contractor to remove cable and copper line that the contractor had purchased from the Carrier from an active pole line.

The Organization and the Carrier made much argument whether the cable and copper line in question were active and/or coming into contact with working lines. In our view, however, this debate does not aid in resolving the claim. Rather, the record reflects that the contractor had purchased the cable and copper line that it was removing on an "as is, where is" basis and thus, the cable and copper line were no longer the property of the Carrier. As such, and in accordance with other Third Division precedent (see e.g., Awards 28488 and 28615) the claim must be 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 17th day of November 2004.