

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37489
Docket No. SG-36713
05-3-01-3-269

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
(BNSF 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 M. J. Spah, T. M. Clark, and M. E. Fretueg, for payment of 140 hours at the straight time rate to be divided equally among the Claimants. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when beginning on February 4, 2000 Carrier allowed outside contractors to remove line wires from a live signal pole line. This action deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 34 00 0019. General Chairman’s File No. C-15-2000. BRS File Case No. 11666-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 to remove dead or disconnected wire from an operable signal system rather than BRS-represented employees. 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 wire in question was abandoned, because it was not connected to the signal system, and, therefore, the work in question need not be assigned to BRS-represented employees. The Organization, however, asserted during the handling on the property, and the Carrier did not rebut, that the lines in question "... can (and did) come into contact with working wires on the same line and caused signal and power disruptions."

In our view the critical point in this dispute is whether the dead wires did in fact come into contact with the live system. If they did not, the wires were indeed abandoned and, in accordance with Third Division precedent, the claim would therefore be denied. However, if the wires did in fact come into contact with the live signal wires and caused power failures or other operational issues, then the work was more in the nature of maintaining the live signal wires, rather than the disposition of abandoned property, not unlike the case cited by the Organization where the work of removing tree limbs that came into contact with live signal wires was work that should have been assigned to BRS-represented personnel.

As noted above, the unrebutted evidence on the property is that the dead wires did in fact come into contact with the live signal wires and thus, we find that the work was maintenance work and should have been assigned to BRS-represented employees.

There remains then the question of remedy. Because the instant claim alleges a violation of the parties' Agreement the Organization bears the burden of proof on all essential elements of the claim, including the remedy. Moreover, the Carrier raised during the handling of the claim on the property the appropriateness of the Organization's requested remedy and the Organization failed to respond. Rather, it only alleged that there was a violation and that there was a lost work opportunity

and nothing more. In light of this record we are constrained to find that the Organization failed to bear its burden of proof as to remedy and we decline to issue any such order.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of April 2005.