

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37874  
Docket No. SG-37484  
06-3-02-3-559**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 (BNSF):**

**Claim on behalf of V. E. Jones, W. J. Eiskina, G. G. Tester, R. C. Cravens, R. M. Pennington and M. E. Workman, for 56 hours each at their respective straight time rates plus an additional 16 hours each for Claimants Jones and Eiskina, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1, the Scope Rule, when it used outside contractors to perform Scope covered work at Tower 3 from April 23, 2001, through May 2, 2001, and deprived the Claimants the opportunity to perform this work. Carrier’s File No. 35 01 0036. General Chairman’s File No. 01-079-BNSF-21-K. BRS File Case No. 12235-BNSF.”**

**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.**

**As background, there is no dispute that the Carrier used the forces of an outside contractor at the Kansas City Terminal Tower 3. Specifically, the installation of a foundation and handrail for a back-up electric generator is at the center of this dispute.**

**The Organization asserts that the work performed by the outside contractor violates Rule 1, Scope, paragraphs (g) and (h). In pertinent part, the Scope Rule protects:**

- “(g) Storage battery plants with charging outfits and switchboard equipment, substation and current generating systems, . .**
- (h) Carpenter, painting, welding, cutting, foundation support, concrete and form work . . .”**

**The Organization argues that the work herein performed by outside contractors involved “current generating systems” and the “foundation support, concrete and form work” for the back-up generator. It presents signed statements attesting to the concrete work previously performed. It firmly denies the Carrier’s position on the Scope Rule, the merged territories and the “Note” to such merger.**

**The Carrier denies the violation, but moreover, states that the work is not encompassed by the new Scope Rule. The Carrier points out that the concrete foundation and handrail work performed was at a location covered by the former Santa Fe employees. The Signalmen of the former ATSF Railway did not have the exclusive right to do concrete work for the installation of generators. The new Scope Rule built from the former BN Scope Rule does not change those prior rights, as indicated in the Note to the revised Scope Rule. The Note states in pertinent part:**

**“NOTE: . . . the sole purpose of describing work covered by this agreement is to preserve pre-existing rights accruing to the**

employees by signal agreements as they existed under similar rules in effect on the . . . ATSF Railway and BN Railroad prior to December 31, 1996; and shall not operate to extend jurisdiction or scope rule coverage to agreements between another organization and one or more of the merging companies which were in effect prior to the above dates of merger.”

The Carrier rejects the Organization’s position with respect to the Note and maintains that no violation occurred.

In any Scope Rule dispute the burden of proof rests upon the Organization. It is the Organization that must demonstrate that the work performed was Agreement covered and reserved to the employees. In this instant case, the additional issue to be considered is the Note to the new Scope Rule. The burden of proof is to demonstrate that the language should be determinative as it is clear and applicable.

The Board reviewed the language, the facts, and the Note with the following conclusion. The language of the Note is disputed. The Organization focuses on: “. . . and shall not operate to extend jurisdiction or scope rule coverage to agreements between another organization and one or more of the merging companies which were in effect prior to the above dates of merger.” For the Organization this is clear that the new Scope Rule applied to all prior Agreements and was not restrictive. The new Scope Rule did not maintain the prior Agreements of each former railroad, but encompassed a consolidated system-wide merged Agreement. Only a few reserved practices it argues, such as signal craft installing signal bridges on the former NP were maintained.

The Carrier disputes this meaning and focuses upon, “The sole purpose of describing work covered by this agreement is to preserve pre-existing rights accruing to the employees covered by signal agreements as they existed under similar rules in effect. . . .” The Carrier argues that because the concrete work was not reserved exclusively to the signal craft on the former ATSF prior to December 31, 1996, it is not now their work under the new Scope Rule because the new Rule preserves the status quo rights, neither adding new rights nor deleting old rights. It does not agree with the Organization’s position with respect to applicability.

There is insufficient evidence of record for the Board to find that the Organization refuted the reasonableness of the Carrier's interpretation of this Note. There is no proof in this record that the Signal employees on the former ATSF, prior to December 31, 1996, did concrete work associated with the installation of generators. The Organization failed to present substantial evidence of probative value that this work was reserved to the Signal employees under the prior ATSF Scope Rule. It proved no specific and clear language, exclusive right, or strong practice that Signalmen at the Kansas City Terminal installed foundations for backup generators. The signed statements do not support the fact that concrete work was applicable to generator foundations, but only signal foundations.

Accordingly, the burden of proof has not been met. We conclude that the Organization failed to demonstrate with sufficient probative evidence that this work was exclusive to Signalmen. The claim must be denied (Third Division Award 32535).

**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 1st day of August 2006.**