

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37883  
Docket No. SG-37824  
06-3-03-3-190

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 and W. J. Eiskina, for 40 hours pay at the straight time rate, account Carrier violated Rule 1, “Scope” of the Agreement, when on March 4, 2002, through March 8, 2002, it allowed an outside contractor to reconfigure gas supply lines for upgrading existing snow melters, to forced air snow melters, at the Cleveland Avenue Interlocking, and deprived the Claimants of this work opportunity. Carrier’s File No. 35 02 0033. General Chairman’s File No. 02-043-BNSF-21-K. BRS File Case No. 12475-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.

This is a Scope Rule dispute in which the Organization argues that the Carrier violated the Agreement when it used outside forces to upgrade equipment at the Cleveland Avenue Interlocking in Kansas City. Specifically, there is no dispute that the Carrier removed propane burners and upgraded to new hot air burners that operated on natural gas. The Organization argues that disconnecting the old lines and equipment, and reconfiguring and connecting the new gas lines belonged to Signal forces. The Organization maintains that when the upgrade of the equipment was performed for the automatic snow removal located at the switches, it was "an appurtenance to this piece of equipment" and came under the Scope of the Agreement.

The Carrier denies any violation and notes that the work is not reserved to Signalmen. It argues that it need not piecemeal this work. Further, the Carrier notes that the work required a licensed and certified contractor under city regulations. The Carrier further points out that this was maintenance-of-way track propane burners. It disputes all elements of the Organization's claim.

The Board studied the record and carefully reviewed the Scope Rule. We note that paragraph B refers to:

"All appurtenances, devices and equipment used in connection with the systems cited in Paragraph A, regardless of where located and how operated, and devices covered by the scope of this agreement, as well as any other work generally recognized as signal work."

We further note that Paragraph D refers to, "Blower, gas, electric or other types of automatic snow removing systems permanently located at switches." And lastly, Paragraph F refers to, "Pipe lines and pipe line connections used for mechanical operation of derails, switches locks, etc."

It is the Organization's responsibility in Scope Rule cases to provide sufficient probative evidence that the disputed work has historically and traditionally been performed by its members. What the Board finds here is a lack of proof. The

language in the Scope Rule does not refer to the “natural gas lines” of the instant dispute. Paragraph F refers to lines used for the “mechanical operation” of switches. While the Organization maintains that this is an “appurtenance” coming under Paragraph B, it offers insufficient proof that BRS-represented employees have the traditional and historical right to perform the work at issue. The Organization did not contest the fact that Signalmen did not perform the initial installation of the propane switch heaters. Nor did it provide evidence that they ever performed the installation of natural gas lines to these hot air burners. The facts indicate that BRS-represented employees did install the new heaters and connected them to the natural gas lines.

Accordingly, the burden of proof has not been met. The work at issue has not been demonstrated to be work covered by the language of the Scope Rule or historically and exclusively performed by Signalmen at this location. The gas lines are not shown to have been an “appurtenance” covered historically under the Scope Rule of this Agreement.

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.