

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37884
Docket No. SG-37851
06-3-03-3-223

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 M. R. Lester, M. Astorga Jr., M. D. Brown, L. W. Scott, R. Pasternak and G. E. Grauer, for eighty hours each at the pro rata rate account Carrier violated the Signalmen’s Agreement, particularly Rule 1 “Scope” when on February 25, 2002 through March 8, 2002, it allowed contractor employees, not covered by the Agreement, to install a Wheel Impact Load Detector (WILD) at MP694.7 Ludlow, California, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 35 02 0039. General Chairman’s File No. 02-033-BNSF-156-CA. BRS File Case No. 12556-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.

There is no dispute with regard to the basic facts. Work began on February 25, 2002 to install a Wheel Impact Load Detector (WILD) at Ludlow, California. The Carrier contracted with Salient Systems to perform the work.

The Organization argues that the detector attaches to the rail and is a part of the track circuit and signal system. As such, the Scope Rule protects this work and was violated. The Scope Rule states in pertinent part that it applies to:

“All automatic block signals and signal systems, traffic control systems, train stop and train control systems; . . . hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, flood or other similar detector systems. . .” (Emphasis added)

The outside contractor came onto the property and installed a detector system. The Organization argues that the Carrier violated the Scope Rule of the Agreement.

The Carrier maintains that this was not a detector system or even similar to equipment covered by Rule 1(a) Scope. Further, the detector system installed was not involved in any way with the signal system. The Carrier denies that the work was reserved exclusively to BRS-represented employees.

The Board fully reviewed the record as argued on the property. The Organization has the burden of proof. It has not provided the requisite proof. The Carrier maintained that this was a one time only project with proprietary procedures, methods, training, and equipment. There is no denial on the one time only work. There is no proof that this was similar to other detector systems on the property. There is also no proof that the detector was tied to the signal system. Therefore, there is no evidence to demonstrate that the work was scope protected. The claim must be denied. See Third Division Award 37387.

Form 1
Page 3

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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.