

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39508
Docket No. SG-38732
09-3-NRAB-00003-050136
(05-3-136)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of D. E. Cash and J. R. Poland, for three hours each at their time and one-half rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rules 15 and 80, when it allowed MTO Joe Caffin and MOP Dirk Peterson, who are both supervisory personnel, to perform ‘efficiency tests’ by placing shunts on the track to interfere with the proper functioning of the signal system on January 20, 2004, at the south end of Sheffield, Iowa, MP 174.3, at 02:40 hours and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 1393996. General Chairman’s File No. N 15 16 422. BRS File Case No. 13130-UP.”

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 events giving rise to the instant dispute are as follows.

On January 20, 2004, the Carrier designated two supervisory employees to install shunt wires on the tracks inside the absolute signals on the "OS" track circuit located at the south end of Sheffield, Iowa, MP 174.3 on the Mason City Subdivision, causing the effected signals to display red indications for the purpose of an efficiency test of a train crew. Thus, the central issue in this case is whether the installation of temporary shunt wires in connection with such efficiency tests is reserved to Signalmen by the Scope Rule of the Agreement. For its part, the Carrier denied the instant claim, asserting that the Scope Rule does not pertain to testing train crews for Rule compliance. In addition, the Carrier posits that Signal personnel have never been used to perform efficiency tests. Moreover, the Carrier notes, placing a shunt wire to create a prescribed test in accordance with its own internal safety standards and FRA regulations does not, as asserted by the Organization, disable or interfere with the proper functioning of the signal system.

In our careful review of the record in this matter, the Board finds that the case is not one of first impression. Thus, as early as 1971, the Third Division held that the use of shunts for the purpose of testing the efficiency of a train crew was work properly performed by members of the Signalmen's craft. In Award 18384, the Board provided the following guidance:

"Those cases which have held that signalmen were entitled to the work fall in two categories, (1) where the sole activity performed at the site where the shunt was applied and the sole reason for being at the site was the application of the shunt, and (2) where the shunt was used as the sole method of protecting a particular block of track to safeguard other work being done. An example of the first would be where a shunt is applied solely to test the readiness or efficiency of train crews. . . ."

(See also Third Division Awards 12627, 30243, 31816 and 31957.)

The above holdings notwithstanding, the Carrier asserts that “[s]uch testing of train crews as to their efficiency in correctly responding to signal indications are performed on a routine basis across the Carrier’s system hundreds of times every year without involvement of the signal craft.” Assuming, arguendo, the Carrier’s assertion to be true, it is well accepted arbitration precedent that the existence of any such past practice does not serve to trump clear contract language, particularly where, as here, there is ample Third Division precedent holding in favor of the Organization in substantially identical circumstances.

AWARD

Claim sustained.

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 2nd day of February 2009.