

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39654
Docket No. SG-39263
09-3-NRAB-00003-060001
(06-3-1)

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein 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:

Claim on behalf of D. C. Clements, M. R. Flynn, C. C. Marshall and J. B. Roberts for 13.5 hours each at their respective time and one-half rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and Rule 2 (Classification), when it allowed an outside contractor to install a Low Hanging Hose Detector system at Mile Post 301.5 as an addition to the existing wheel and car alignment detector, on the Thayer subdivision on December 2 and 3, 2004 and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 35 05 0015. General Chairman’s File No. 04-144-BNSF-129-S. BRS File Case No. 13332-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.

The Claimants assert that they have the exclusive right to install low-hanging hose detectors. The Carrier permitted an outside contractor and one Carrier Track Department employee to install a low-hanging hose detector inside an existing wheel and car alignment detector on the right-of-way at milepost 301.5 on the Thayer Subdivision on December 2 and 3, 2004. Low-hanging hose detectors let the Mechanical Department know when an air hose is dangling, thus preventing the dangling hose from causing a problem. Low-hanging hose detectors do not provide information to trains, are not intended to stop trains if there is any defect and the device does not have any track circuits.

The Organization claims that the low-hanging hose detector is no different than any other detector covered by the Scope Rule on the BNSF System. The Organization explains that the low-hanging hose detector is attached to the rails and is designed to prevent damage to equipment. The Organization likens the low-hanging hose detectors to other dragging detectors it installs and maintains that do not provide immediate notification to trains or immediately stop trains and are not connected to a signal system. The Organization cites examples including acoustic detectors, wheel counters, warm bearing detectors, on-station detectors, and terminal detectors. The Organization emphasizes that it maintains wheel impact load detectors which do not communicate directly with trains and are not tied to a signal system.

The Carrier argues that the low-hanging hose detectors are a Mechanical Department function, do not have any track circuits and are not tied into the signal system. The Carrier asserts that because the low-hanging hose detectors are not tied into the signal system, they are not similar to the detectors listed in the Scope Rule. The Carrier emphasizes that the Organization has not offered evidence in support of its assertions. Addressing the Organization's argument that low-hanging hose detectors may be compared to wheel impact load detectors, the Carrier asserts that the two devices are not similar and that the Organization has never installed a complete wheel impact load detector anywhere on the Carrier's property.

Rule 1, the Scope Rule provides in pertinent part:

“This agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, reconstruction, reconditioning, installation, reclaiming, maintenance, repair, inspection and tests, either in the signal shop, or in the field of the following:

- A. All automatic block signals and signal systems, traffic control systems, train stop and train control systems; interlocking; cab signal systems; car retarder systems; highway railroad grade crossing protection systems, hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, flood or other similar detector systems; train order signals, take sliding, call on, start or dwarf signals, power and electrically locked switches, spring switches, track occupancy indicators, and car counting devices connected to or through automatic block or interlocking systems.**
- B. 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.”**

Careful review of the on-property record shows insufficient evidence in support of the Organization’s allegations that the low hanging hose detectors are “similar” to detectors covered by the Scope Rule. Although the Organization would compare low-hanging hose detectors with detectors whose installation is covered by Rule 1, there is insufficient evidence that these individual detectors are indeed similar within the meaning of Rule 1. Therefore, in the absence of sufficient proof, the Board is compelled to deny this claim.

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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 22nd day of April 2009.