

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39690
Docket No. SG-38806
09-3-NRAB-00003-050216
(05-3-216)

The Third Division consisted of the regular members and in addition Referee Susan R. Brown when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Massachusetts Bay Commuter Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Massachusetts Bay Commuter Railroad:

Claim on behalf of A. Harkins, for three hours each at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 – Scope and Rule 2 - Classifications, when on January 23, 2004, at 2 p.m., it used a management employee instead of the claimant to download crossing data at North Avenue. Carrier’s File No. MBCR-BRS-07 (a-d)/0504. General Chairman’s File No. JY32101077-120045. BRS file Case No. 13163-MBCR.”

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.

Claimant A. Harkins is an Electronic Technician headquartered at Abington, Massachusetts. On January 23, 2004 at 2:00 P.M., Roadmaster M. Pellazollo downloaded the crossing recorder at North Avenue. According to the Organization, Electronic Technicians maintain, test, and repair these recorders; they are qualified to download the crossing data in order to make required repairs for the safe operation of the crossing; Roadmasters are not so qualified.

The Carrier asserts that no craft or classification holds exclusive rights to downloading event recorders; in fact, there is no mention of recorders in the Scope Rule. Management retains the right and obligation to use event recorder data when conducting investigations into accidents, incidents, Rule violations, etc. Moreover, no overtime was worked in the course of obtaining these recorder files.

Rule 2 sets forth the following description for Electronic Technician:

“An employee responsible for the field maintenance, testing, adjustment, repair, and replacement of electronic and electromagnetic components associated with the C.T.C. code control systems, hot box detectors, motion sensors, presence detectors, broken flange and wheel detectors, high and wide load detectors, flood and slide detectors and any other similar systems in the Communication and Signal Department and the code line systems associated with them (except for computerized dispatching systems). An Electronic Technician may direct other C&S Department employees in connection with these duties.”

It is unnecessary to cite precedent for the well-established principle that the Organization bears the burden of proving that the Carrier committed the Agreement violation complained of. The first element of that proof in the case before the Board is that the claimed work belonged to the aggrieved Claimant. We find no such proof in the on-property record.

The Electronic Technician position description specifies maintenance, testing, adjustment, repair, and replacement of components in various devices and systems. Even assuming for the sake of argument that an event recorder is encompassed by the long list of devices and systems contained in Rule 2, about which we make no finding, there is no evidence whatever that the Electronic Technician is the only classification of employee who might need to access the information located in an event recorder. We infer from the Organization's argument that Electronic Technicians do indeed download certain data in order to perform such duties as testing or adjustment. Surely, however, the event recorders must collect data that are used for a function beyond the device's own testing and repair, or why have an event recorder in the first place? We can further infer, therefore, that one or more other employee classifications need to access those data for some other purpose – statistical record keeping or “event” investigation or some other administrative reason – that has nothing to do with maintenance and repair of the equipment.

Absent any evidence that the Roadmaster was performing the duties of an Electronic Technician, that is, downloading data for the maintenance, testing, adjusting, repairing or replacing of components of a device covered by Rule 2, the Board finds no violation of the 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 26th day of May 2009.