

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39700
Docket No. SG-38209
09-3-NRAB-00003-040120
(04-3-120)**

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson 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 R. Blowers, G. G. Tester, R. C. Cravens and V. E. Jones, for 100 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 ‘SCOPE,’ when on February 1, 2003, Carrier used an outside contractor to install a generator used for the signal system at the Old Union Depot at the Kansas City Terminal. (Carrier’s File No. 35 03 0031; General Chairman’s File No. 03-036-BNSF-21-K; BRS File Case No. 12828-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.

It is the contention of the Organization that Rule 1, Scope, of applicable Agreement Rules was violated when, on February 1, 2003, the Carrier allowed or permitted contractor employees to install a back-up generator at the old Union Depot of the Kansas City Terminal for what the Organization says was “the express purpose of supplying a back-up power supply for the signal system at Tower 2 during commercial power outages.” The claim requests the Carrier pay each of the four Claimants 100 hours at the straight time rate of pay for a lost opportunity to have been utilized to perform the work at issue.

The Organization contends that the Scope Rule reserves the work in dispute to its represented employees to the exclusion of contractors. In this respect, it directs particular attention to the following provisions of Rule 1, Scope:

“This agreement govern the rates of pay, hours of service and working conditions of all employees engaged in the construction, . . . installation, . . . either in the signal shop, or in the field of the following:

*** * ***

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.

*** * ***

G. Storage battery plants with charging outfits and switchboard equipment, substation and current generating systems, compressed air plants and compressed air pipe mains and distributing systems as used for the operation of such railroad signaling and interlocking or retarder systems. (This only

applies to Signal Department electric or air lines within such systems up to the necessary service connections, except where such lines are installed initially or primarily for signal use.)”

The Carrier asserts the work at issue is not exclusively reserved to Signal Department employees in that the generator was for the purpose of supplying auxiliary power for Tower 2 – not just signals.

In this respect, the Carrier, in its initial denial of the claim on the property, among other things, said the following in a letter dated April 14, 2003:

“There is also no validity to your reference to the generators primary purpose. This generator was installed to supply the electrical needs of all KCT departmental users at Tower 2.”

The record as thereafter presented and appealed during the handling of the claim on the property does not show the Organization to have provided probative evidence or support for its contention that construction and installation of the back-up generator involved “strictly signal facilities,” as the Organization said in its response letter to the Carrier of April 15, 2003.

In the circumstances it must be concluded that because the Organization has not met a necessary burden of proof as the presenter of the claim that installation of the generator was solely for Signal Department equipment use, the claim will be denied.

AWARD

Claim denied.

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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.