

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39870
Docket No. SG-39443
09-3-NRAB-00003-060117
(06-3-117)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 G. D. Shrum, for four hours on January 26, 2005, two hours on January 27, 2005, and two hours on January 31, 2005, at his applicable straight-time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 2 and past practice, when it assigned a Signal Maintainer to perform relay timing tests at M.P. 129.1, M.P. 129.8, M.P. 130.6, M.P. 131.9 and M.P. 138.1 on the Claimant’s assigned territory and denied the Claimant the opportunity to perform this work. Carrier’s File No. 35 05 0025. General Chairman’s File No. 05-017-BNSF-20-C. BRS File Case No. 13535-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 Organization filed the instant claim on behalf of Signal Inspector G. D. Shrum, after the Carrier assigned a Signal Maintainer to perform certain timing and relay tests at locations on the Chicago District. The Organization contended that the Carrier violated Rule 2 of the Agreement when it assigned a Signal Maintainer to perform the work of a Signal Inspector.

The Carrier denied the claim, asserting that no violation of the Agreement occurred. The Carrier asserted that the Signal Maintainer was properly required to perform the annual testing at locations on his territory, and the work was not exclusively reserved to Signal Inspectors.

Rule 2 provides in pertinent part:

“RULE 2 – CLASSIFICATION

- B. Signal Inspector: An employee assigned to and whose principal duties are the inspection and field testing of appliances, appurtenances and equipment covered by the scope of this agreement. Such employee shall make all relay and apparatus inspections and tests, including meggering, required by and reported to the Department of Transportation and those required by the Carrier, but who may perform any Signal Department work. Inspectors may work together or with signalmen or signal maintainers with or without their assistants and/or helpers in connection with testing and inspecting. This rule shall not be construed as restricting the inspection and/or testing of signal apparatus, appliances, circuits and appurtenances by other employees covered by this agreement. Supervisory officers of the Carrier may make other than routine and periodic tests and inspections.**

- I. Signal Maintainer: An employee assigned to the maintenance duties on a territory, to perform such work as inspections and tests, general maintenance, and installation incidental to the maintenance of the territory, and who also may be assigned to maintain CTC, Car Retarder and/or manually-operated interlocking. Includes Traveling Signal Maintainer who is an employee not assigned to a continuous district, but assigned to maintain a series of scattered locations.”**

After careful consideration of the Agreement language, the Board finds that the Organization failed to establish that the Carrier violated Rule 2 when it assigned a Signal Maintainer, rather than a Signal Inspector, to perform the work in question. The Rule does not reserve testing work exclusively to Signal Inspectors. On the contrary, Rule 2 specifies that testing may be performed by both Signal Inspectors and Signal Maintainers. Rule 2 further emphasizes the lack of exclusivity when it states: “This rule shall not be construed as restricting the inspection and/or testing of signal apparatus, appliances, circuits and appurtenances by other employees covered by this agreement.”

The evidence offered by the Organization does not change the result. The Organization submitted a section from an instruction manual and several reports from one Signal Inspector to support its position that the work is exclusively reserved to Signal Inspectors. The difficulty with the proffer of evidence by the Organization is that, even if Signal Inspectors have performed the testing at issue, such work is not reserved only to Signal Inspectors. Rule 2 is clear and unambiguous in establishing that both classes of employees may perform testing work. Accord, Third Division Award 39315. The Carrier did not violate the Agreement when it assigned the testing work to a Signal Maintainer.

Having failed to shoulder its burden of proof, the Organization’s claim must be denied.

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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 31st day of July 2009.