Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40222
Docket No. SG-40067
09-3-NRAB-00003-070309
(07-3-309)

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 G. D. Shrum, for four hours on April 18, 2006, four hours on April 19, 2006, four hours on April 20, 2006, four hours on April 21, 2006, one hour on April 24, 2006, and one hour on April 25, 2006, 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 signal mechanism relay tests between M.P. 745.3 and M.P. 89.2 on the Claimant's assigned territory and denied the Claimant the opportunity to perform this work."

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 Claimant was a Signal Inspector when this dispute arose. On the dates claimed, the Carrier utilized a Signal Maintainer to perform signal mechanism relay tests. The Organization thereafter filed the instant claim, contending that such work is exclusively reserved to Signal Inspectors in accordance with Rule 2 and past practice. Rule 2 – CLASSIFICATION reads, in relevant part, as follows:

> "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 or periodic tests and inspections.
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> 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.

* * *

NOTE: This rule shall not be construed to prevent employees in one class from regularly performing work in another class incidental to the duties of their assignments."

The Organization contends that relay testing is the exclusive work of Signal Inspectors. Rule 2, paragraph (B) is clear and unambiguous in stating that Signal Inspectors "shall" make all relay and apparatus inspections and tests. Moreover, the Organization argues that the Carrier's own Signal Test Interval Policy shows that testing relays is a required test reserved to Signal Inspectors.

The Carrier asserts that Rule 2 does not reserve testing to Signal Inspectors. On the contrary, Rule 2 explicitly acknowledges that various other employees may also perform testing. Equally significant, Rule 2, Section I states that Signal Maintainers perform "tests" and therefore it must be concluded that both classes of employees may perform testing work. This conclusion is reinforced by the NOTE to Rule 2, which permits testing performed by Signal Maintainers incidental to the duties of their assignment. Finally, the Carrier asserts that the Organization cannot meet its heavy burden of establishing exclusivity in this intra-craft dispute and thus any claim of past practice must fail.

The issue before the Board has been decided in two recent Awards. In Third Division Awards 39315 and 39701, the Board held that Rule 2 permits work related to tests to be job functions of both Signal Maintainers and Signal Inspectors. While it is true that Rule 2 specifies that a Signal Inspector "shall make all relay and apparatus inspections and tests," it then goes on to state: "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."

Evidence of past practice does not change the result. When there is a jurisdictional question between employees of the same craft, represented by the same Organization, the burden of establishing an exclusive right to the work in question is very steep. See Third Division Awards 37016, 36210, 36088 and 32647. Based on the record before the Board, we are unconvinced that the Organization's evidentiary burden has been satisfied.

The Organization failed to demonstrate that the Carrier violated Rule 2 or past practice when it assigned a Signal Maintainer to perform the disputed work. Accordingly, this claim must be denied.

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 21st day of December 2009.