

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40312
Docket No. SG-40270
10-3-NRAB-00003-080007**

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:

Claim on behalf of J. J. Bitner, R. J. Buhl, T. M. Dutchuk, L. M. Grossman, G. A. Hastings, J. M. May, P. S. Meszaros, W. R. Rindy, M. T. Schons, K. P. Scott and J. D. Wiese, for 105 hours at the time and one-half rate of pay to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope), when it allowed contractors to install conduits and conduit systems on the KO Subdivision, Twin Cities Division, Twin Cities Region at W 7.71, DOT No. 070810H, 8th St., M/P 7.42, DOT No. 070870A, 4th St., both in Fargo, ND and M/P 6.37, DOT No. 062949V, 11th St., Moorhead, MN, from May 4, 2006 through June 26, 2006 and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 35-06-0035. General Chairman’s File No. 06-028-BNSF-154-TC. BRS File Case No. 13828-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 instant claim alleges that the Carrier violated Rule 1 (Scope) of the Agreement when it utilized the services of an outside contractor to install conduits and conduits systems on the Twin Cities region. The Organization contends that the contractor used a directional boring machine to make an opening for the conduit and then pulled in the conduit. The sole purpose of the conduit was to carry signal cables for signal appliances and applications. This work, the Organization asserts, is specifically and exclusively reserved for BRS-represented employees covered by Rule 1.

The Organization further contends that the Claimants possessed the ability to perform the work and have performed such work in the past when installing underground conduit. Numerous examples are cited in which covered Signal employees performed similar work for the purpose of installing underground signal conduit. In light of this established past practice, the Organization argues that the parties have recognized that BRS-represented employees are fully capable of performing directional boring. Because the installation of conduit using directional boring is one process and installation of conduit is specifically reserved by Agreement to Signalmen, the whole process, including boring and conduit installation, is Agreement covered work, the Organization contends.

The Carrier asserts that the work at issue involved directional boring which is not covered work under Rule 1 of the Agreement, as prior Awards of the Board have recognized. The Carrier contends that the directional bore is pushed under the track and pulled back with the conduit attached to the directional boring tool. Because this is done with acute precision to avoid underground utilities, it is not possible to push the conduit back through the hole that was originally bored without connecting the conduit to the directional bore tool and pulling it back through the original hole. The Carrier contends that the Organization has not established that the disputed work falls within the scope of the Parties' Agreement, according to the Carrier, and therefore it was not prohibited from utilizing the services of an outside contractor, just as it has done in the past.

As the moving party in this dispute, the Organization had the burden of proof. Based on the record in its entirety, the Board finds that the Organization did not meet its burden. Directional boring is not identified as one of the many specific tasks exclusively reserved to Signal employees under the Scope Rule. There are numerous decisions which have held that directional boring work is not within the scope of the Agreement regardless of whether or not Signal employees have occasionally performed similar work. See, Third Division Awards 24538, 34169, 37245, 37290 and 37296. Significantly, two of these cases were on the property and involved the Carrier's utilization of outside forces to bore under tracks to install conduit and conduit systems, the precise work at issue herein. See Third Division Awards 37245 and 37290.

In light of this established precedent, and in view of the fact that the conduit work performed by the contractor was the final step in the directional boring process and was integrally related to the specialized boring procedure, the Board concludes that the Organization has not established that this process is reserved to its members, nor has it established that the conduit work could somehow be segregated from the task of directional boring and assigned in piecemeal fashion to Signal employees. 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 1st day of March 2010.