

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41426  
Docket No. SG-38259  
12-3-NRAB-00003-040160  
(12-3-NRAB-00003-120316)

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 C. S. Johnson, J. Jennison, B. Schulte and D. L. Karlstrom, for 24 hours each per location at their respective punitive rates of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 1 (SCOPE), when during the month of January 2003, Carrier allowed Communication Department employees, who hold no seniority under the Signalmen's Agreement, to perform covered work of installing data radios and antennas connected to Hot Box Detectors (HBD) located at Hysham, Mt. Newton, Mt. Wyola, Mt. Hardin, Mt. Verona, Wy, and Lariat, Wy. The sole purpose of the data radios is to transmit HBD data information, and not voice communications. Also because of the loss of work opportunity, four BRS employees have been furloughed on this seniority district. Carrier's File No. 35 03 0037. General Chairman's File No. 03-024-BNSF-87-B. BRS File Case No. 12817-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.

Following the Board's issuance of a Third Party Notice, the International Brotherhood of Electrical Workers (IBEW) filed its Submission and appeared at the Referee Hearing.

The facts giving rise to this claim are not in dispute; the issue before the Board is one of bargaining unit jurisdiction. Starting in early 2003, the Carrier began installing new Meteor Comm radios and antennae at various locations. In a letter dated February 23, 2003, the Organization filed this claim, contending that the Carrier violated the Scope clause of the Signalmen's Agreement when it used its Communications Department employees, who are represented by the IBEW, not BRS, to install data radios and antennas connecting them to existing Hot Box Detectors at various locations in Montana and Wyoming. This claim is one of nine that were ultimately filed about the same jurisdictional dispute; the parties agreed to hold the other claims in abeyance pending the Board's resolution of this claim.

According to the Organization, the sole purpose of the Meteor Comm radios is to transmit Hot Box Detector (HBD) data information, and not voice communications. The installation and maintenance of HBDs and their appurtenances is covered in the Scope of the Agreement and has always been performed by employees represented by the Brotherhood of Railroad Signalmen on the former Northern Pacific lines (BNRR). The only change in the Meteor Comm radios was in the method used to transmit the data, which is nothing more than new technology that accomplishes the same function. All previous methods used to transmit HBD data were installed and maintained by BRS-represented employees, and the new device simply replaces the modem at these locations. The Scope Rule covers the installation of "All . . . hot box . . . or other similar detector systems. . . ." and "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.” The equipment at issue is used to transmit warm and hot bearing information gathered by a HBD system. It is an appurtenance of that system and is accordingly covered by the Signalman’s Agreement. In Third Division Award 35008 from this property, the Board ruled that radios used for the exclusive transmission of signals data from signal equipment must be installed and maintained by BRS Agreement covered employees. The Board recognized that the principle of change in technology does not alter long-established work rights under the Agreement. The Organization contends that it is the function, purpose, and usage of the equipment that bring the equipment under the Scope of the Agreement. As advancements change the shape of signal technology, the Scope Rule changes too. In this instance, the equipment described in the claim became a part of the HBD system and therefore belongs to BRS-represented employees. The Carrier’s System General Order No. 21 supports the Organization’s claim that the data radio is part of or an appurtenance of the HBD. The radios transmit data gathered by the HBD system and alert the Mechanical Department of hot bearings (journals). In turn the Mechanical Department contacts the Chief Dispatcher, and he in turn contacts the train crew to alert them of the hot bearing failure, the same as is presently done. It also appears that the Carrier is not only using new data radio technology to replace the present method for transmitting failures, it also is installing a new TWD to determine its ability to predict journal failures in conjunction with existing TWDs. (TWD is the acronym for “Track Side Warning Detector,” which is the current name for Hot Box Detectors and other detector systems that are installed and maintained by BNSF employees represented by the BRS). The claim should be sustained and the Claimants should be compensated 24 hours each per location at their respective punitive rates of pay for this loss of work opportunity.

Any work that is a part of the signal system is covered by the Signalmen's Agreement. The equipment installed by the Communications Department employees had one purpose: the reporting of warm bearing detection. This equipment is an integral part of the HBD system, which is indisputably part of the signal system. This new method simply replaces the old method of alerting train crews. This Board and other boards of adjustment have recognized that it is the character and purpose of the work which determines the application of the Scope Rule, and that the application of a different technology does not exempt work from coverage under the Agreement.

According to the Carrier, the responsibility of the Signal Department has not changed. Signal personnel still install and maintain the same equipment as in the past.

Moreover, the installation of radios and antennas is not exclusive to the Signal Department. The Meteor Comm radios deliver information that has always been the responsibility of the Communications Department. The Meteor Comm radios do not serve the same function as the modems in the Hot Box Detectors. The information is about warm bearings, not hot bearings. The data is not transmitted to the train crews. Instead, it is transmitted to the Mechanical Department, for its personnel to analyze and determine what, if anything, should be done. Furthermore, the Claimants are not entitled to any compensation because they were fully employed when the work was done and lost no compensation as a result of the work being performed by employees of the Communications Department. Even if they are entitled to compensation, the number of hours claimed (24 for each of four Claimants at each of the affected locations) is well in excess of the actual hours required to perform the work, which was on average 12 man-hours total at each of the six locations where the work was done.

According to the IBEW, the work in dispute is work properly performed by employees of the Communications Department, not the Signal Department. At each HBD site there is also a VHF high band radio (Kenwood TK762) installed that broadcasts a prerecorded message to passing train crews to alert them of any defects. These radios are a part of or an appurtenance of the HBD system and have been in place for many years prior to the installation of the subject Meteor Comm radios. However, IBEW-represented employees from the Communications Department have always installed and maintained such equipment, and at no time has the Brotherhood of Railway Signalmen claimed this radio as their work. The Meteor Comm data radios in question basically mimic the information being broadcast by the Kenwood TK762 radios. They send the data received to the Warm Bearing Desk at the Network Operations Center (NOC) in Fort Worth, Texas. The Warm Bearing Desk, manned by exempt Mechanical Department employees, in turn uses this real time data to notify and dispatch the appropriate Mechanical Department personnel as necessary to perform any needed repairs. Therefore, the Meteor Comm radio is an extension/advancement of the previously installed VHF high band radio at HBD sites. The Meteor Comm radio is simply a redundant system to the Kenwood TK762 radio and neither radio affects the control and/or movement of trains.

As Referee Wesman noted in Public Law Board No. 4716, Award 86 involving a similar dispute between the BRS and the Union Pacific Railroad "... technological change often presents particular challenges where work to be separated among crafts is no longer easily distinguished. Understandably, unions become increasingly sensitive to

encroachment upon work traditionally reserved to them, as technology, unmindful of such boundaries, changes the unique characteristics of that work.” This is just such a claim, where technological change has blurred formerly clear distinctions between bargaining units and their respective jurisdictions. The BRS Scope Rule and the IBEW Classification of Work Rule assigns both crafts the right to install data systems and radios.

In Third Division Award 35008 involving the parties to this dispute, the Board held that “. . . the focus of our inquiry is not on the technology itself, but rather, the use of the technology.” The use of the technology is an appropriate starting place for analysis. The record before the Board in the instant claim is not entirely clear, with both Organizations making allegations about the nature and use of the data received by the Meteor Comm radios that are in dispute.

Certain facts do stand out, however. The Meteor Comm radios were not used to replace the existing modems in the HBDs: a memorandum from Fred Meeks, in Engineer Systems—Detectors, clearly states that Communications Department personnel had been removing the modems in error and concluded “Don’t remove them.” Another memorandum establishes that Meeks was also aware of the need to coordinate with Signal Department personnel by ensuring that they were present at the time of the installation in order to test the system after the installation was completed. Additionally, it appears that the Carrier is using existing HBDs to locate other data functions, for instance, the HLCS add-ons, which transmit such information as GPS data and wind speed. Ultimately, it appears that the Meteor Comm radios are being used to transmit the same data as the Kenwood VHF radios at each HBD location. The Kenwood radios were neither installed by Signal Department employees, nor claimed by them. They were installed by Communications Department employees represented by IBEW.

The Organization’s point that warm bearing data is but a new variation on the old hot bearing data over which it has historically had jurisdiction is well taken: in the past, a bearing had to actually get hot before an alert could be raised. Warm bearing data is akin to a “hot bearing early warning system,” and so the two systems are linked in function. However, that does not change the fact that the radios now being used to transmit the data are ones that replace a model installed by Communications Department employees. In Award 35008, the Board, itself citing prior PLB Awards, also noted:

“. . . when the signal system overlaps and is combined with a circuit handled by Communication Workers, however, the installation and maintenance work shall be performed by IBEW represented employees.”

In this case, the Kenwood radios at HBD locations were installed by Communications Department employees. Accordingly, the BRS - BNSF Agreement was not violated when the Carrier assigned the same employees to install the Meteor Comm radios that replaced them and/or replicated the data submitted by them.

**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 5th day of September 2012.