

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41428
Docket No. SG-41433
12-3-NRAB-00003-100313**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 BNSF Railway Company:

Claim on behalf of J. C. Wooden, for three hours at the straight time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 (Scope) and Rule 2 (Classification), when on May 30, 2009, Carrier used a non-covered employee (Assistant Chief Dispatcher) to trouble shoot a computer problem on signal related equipment in the NOC. Carrier’s action deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 35 09 0013. General Chairman’s File No. 09-024-BNSF-133-T. BRS File Case No. 14355-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.

As Third Party in Interest, the American Train Dispatchers Association (ATDA) was notified of the pendency of the dispute. ATDA submitted a letter from its President, F. L. McCann, dated August 16, 2011, indicating that it would not file a Submission for consideration by the Board in this dispute.

On May 30, 2009, programs on the workstation desktop computers assigned to the Oregon Branch, Hinckley, and Trinidad/Front Range Train Dispatchers experienced malfunctions. When minor malfunctions occur, Train Dispatchers are instructed either to contact an Assistant Chief Dispatcher (ACD) on duty for assistance in resolving the problem, or simply to reboot their computer (i.e., turn it off, then back on) and report the problem to the ACD so that it can be forwarded to an Electronic Technician to research. According to the Organization, three incidents occurred on May 30, 2009:

- 1) At 1:10 A.M., an ACD attempted to fix a computer problem on the Oregon Branch Workstation, causing the Train Dispatcher to be unable to issue a Track Warrant.
- 2) At 1:15 A.M., an ACD attempted to fix a computer problem on the Hinckley Workstations, causing the Train Dispatcher to be unable to release a Track Warrant.
- 3) At 1:40 A.M., an ACD attempted to fix a computer problem on the Trinidad/Front Range Workstation causing the Train Dispatcher to be unable to move an ID.

According to the Carrier, the protocol was followed in each instance: the Train Dispatchers contacted an on-duty ACD for assistance. When the problems could not be readily resolved, the computers were re-booted and the problems were reported to the Electronic Technicians for analysis.

The Organization filed this claim, alleging that Rules 1 and 2 of the Signalmen's Agreement had been violated when ACDs worked on workstations in the Network Operations Center (NOC). According to the Organization, the workstations are covered under the Scope of the Agreement as "appurtenances" to signal-related equipment. The reliability and functionality of the workstations are essential elements of the Carrier's signal system. It makes no difference where the equipment is located or what type it is: the work is reserved to Electronic Technicians under Rule 1. The fact that computers had not been invented when the Scope Rule was drafted makes no difference – the Rule should be interpreted in light of changing technology. Nor is there any exception in Rule 1 for simple tasks. Moreover, the work was not de minimis: the ACD spent one hour working on each incident. An Electronic Technician should have been called to perform the work.

The Carrier argues that the work at issue is not reserved to BRS-represented Electronic Technicians. Rule 1 does not mention the simple task of re-booting a computer. Under Rule 2, Item A, Electronic Technicians are assigned the duties of "adjusting, repairing, maintaining, and replacing" equipment. The ACDs did not adjust, repair, maintain, or replace any system or device covered by the Agreement. If the disputed work is not specifically identified in the Scope Rule, the Organization must provide evidence proving the historical performance of the disputed work exclusively by BRS-represented employees. This was a simple case of an employee experiencing an application problem on a networked computer running on the Windows platform. Neither the ACD nor the Train Dispatchers assigned to the affected computers performed any maintenance or repairs on any equipment. This was not a case of diagnosing, testing, or repairing a computer. Anyone familiar with working with electronic systems understands that occasionally applications or workstations will lock up and require re-booting. The problems were forwarded through the proper channels for research by an Electronic Technician, per the established protocol. The record indicates that Electronic Technicians did research and troubleshoot each of the incidents. There is no evidence that the problems continued.

The record does not include any information regarding the technical nature of the problems that occurred. As a result, it is not clear how long any trouble-shooting by the ACD may have taken. It is also unclear who actually rebooted the computers (the individual Train Dispatcher at the workstation or the ACD). Simply turning a

computer off, then back on ordinarily takes a few minutes at most. Moreover, it appears that there is an existing protocol that balances the Carrier's need for quick resolution of minor problems with the necessity of informing Electronic Technicians of all problems so that they can analyze them and take any necessary additional steps to correct and maintain the system. Considering the record available in this case, the Board concludes that the actions taken by the ACDs were de minimis in nature, and that the Carrier did not violate the parties' Agreement when it did not call in Electronic Technicians to perform the first-level analysis and re-boots.

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.