

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41832

Docket No. SG-41718

14-3-NRAB-00003-130347 (New)

14-3-NRAB-00003-110319 (Old)

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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 BNSF Railway Company:

Claim on behalf of S. M. Gefroh, for \$25.00 per working day that he is held on his current position starting on April 9, 2010, and continuing until he is released to make a displacement, account Carrier violated Agreement Rules 28, 29, and 41, when it made a material change to the Claimant's territory adding additional equipment. Carrier's File No. 35-10-0012. General Chairman's File No. 10-024-BNSF-119-D. BRS File Case No. 14511-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.

This case involves the interpretation of a Rule involving what must happen if a “material change” is made on the Claimant’s territory. If a change is made, which is “material,” the Organization argues that the Carrier must re-bulletin a position. Because this is a Rules case, the Organization bears the burden of proof.

The Rules in question are as follows:

**“RULE 28 CHANGE IN TERRITORY – HEADQUARTERS**

A. When change is made in the location of an employee’s headquarters or when the fact is established that the territorial limits are materially changed or material change is made in apparatus to be maintained the position will be bulletined as a new position at the request of the General Chairman. If incumbent is not the successful applicant, he will be permitted to exercise his displacement right as provided in Rule 29 when new incumbent assumes the position. (Emphasis added.)

\* \* \*

**RULE 29 FORCE REDUCTIONS**

\* \* \*

**RULE 41 BULLETIN AND ASSIGNMENT**

\* \* \*

“G. If successful applicant is not placed upon position within the specified time limit, the successful applicant thereafter will be paid the rate of the position awarded plus an additional \$3.00 per working day until such time as he is transferred thereto.”

In a Side Letter dated May 29, 2007, the parties agreed to amend Rule 41(G) to read as follows:

“Effective with this Agreement, the following changes are made to the September 1, 1972 BNSF/BRS Agreement as revised on October 1, 2004:

\* \* \*

2. The rate addressed in Rule 41(G) for additional pay for a successful applicant who is not placed upon a position within the specified time-limit will be increased to \$25.00 per working day.”

One of the Organization’s contentions is that Rule 29 was violated. Rule 29 was presented in full to the Board and its application was argued. The Board finds that Rule 29 deals solely with force reductions. No such reduction occurred here – in fact, it is an additional workload which the Organization argues results in a “material change.” Therefore, after a thorough review of that Rule and the arguments presented, the Board finds that Rule 29 was not violated.

Rule 41 deals with the procedures to be followed if there is a violation of Rule 28. Therefore, we need not deal with that Rule unless we find that the Organization has met its burden of proof with respect to a violation of Rule 28. We therefore turn to Rule 28.

The parties concur that the Agreement does not define the term “material change.” It is, therefore, left to the Board to determine, based on the record evidence presented, whether the Organization has proven that a “material change” has occurred in this instance.

The Organization described the changes the Carrier made to the Claimant’s territory as follows:

“He had 34 power switches and switch heaters, 4 Electric Locks, 1 hand throw switch, 3 intermediate signal locations, 4 control points,

and 9 Dragging Equipment Detectors. He now has 42 power switches, 4 Electric Locks, 1 hand throw switch, 3 intermediate signal locations, 4 control points, and 9 Dragging Equipment Detectors. He gained a control point at Mile Post 91.5 and lost a control point at MP 90.5. The new control point has 16 power switches and switch heaters, 14 OS Track Circuits, 3 ECTCI, 3 VHLC, 4 Recovery Timers, 1 B110 Battery Bank and Chargers, 3 B12 Battery Bank and Chargers, 2 Bridges, 2 Radios, 1 Transfer Panel. At the former MP 90.5 location he had 8 power switches, 4 OS Track Circuits, 2 ECTCI, 2 VHLC, 2 B28 Battery Banks and Chargers, 2 B12 Battery Bank and Chargers, 1 Bridge and 1 Radio. This resulted in a net gain in equipment in the new control point over the former control point as follows:

8 power switches, 10 OS Track Circuits, 6 Electro Code Track Circuits, 4 Recovery Timers, 1 B110 Battery Bank and Charger, 1 B12 Battery Bank and Charger, 1 Bridge, 1 Radio and 1 Transfer Panel. He also has a new East Bridge House and a new West Bridge House which caused him to gain 6 B12 Battery Banks and Chargers, and 6 Electro Code 4 Plus cabinets with associated circuits.”

The Organization contended that these were significant “material changes” to the amount of equipment that the Claimant would be responsible to maintain. As a consequence, it asserted that pursuant to Rule 28, the Carrier was obligated to bulletin the Claimant’s position as a new position. In fact, the Organization calculated that this amounted to a 25% increase in the number of switches that the Claimant was obligated to test and maintain.

The Carrier has a different perspective. It acknowledges a workload increase, but it submits, instead, that the increase amounts to 8.8%. This figure was taken from an Association of American Railroads (AAR) report for the Signal Maintainer assignment in question. This document, which was included in Exhibit 8 of the Carrier’s Submission, is entitled “Statement of Signal Work Units and Supporting Data.” It includes a “unit value” assessment for each signal-related unit on the

territory, as a measure of workload. Each piece of equipment is itemized. The number of like units is then multiplied by the unit value to obtain a total measure of workload. This was compared to the pre-change values and results in the aforementioned 8.8% workload measure increase.

There seems to be no dispute between the parties as to the railway equipment in question. Rather, the issue is the extent of the workload increase and whether such increase constitutes a “material change.” The Organization further argues, in its Submission, that even if the measure of the workload increase is 8.08%, in a year of (say) 2,000 hours, such would amount to an extra 161 hours of work which, in any reasonable view, would constitute a “material change.” It contends that such an increase should trigger a re-bidding and hence the ability of employees to use their seniority to choose the jobs they prefer. The Carrier counters by asserting that the workload increase in question does not constitute a “material change.” In any event, it contends that there is no definition of materiality in the parties Agreement or otherwise.

As a threshold matter, the Board finds that simply having more equipment is not the best measure of workload. Indeed, many companies invest in new equipment in order to reduce maintenance costs. For example, a fleet of 100 new vehicles may actually involve less maintenance work than a fleet of 80 old ones. This is the common analysis of replacing labor with capital. Therefore, the Board finds that, absent any other evidence before it, the AAR measure of workload is to be preferred over a simple inventory of assets.

The Organization further argues that the addition of equipment could result in a “workload creep” type of situation. It suggests that there is nothing to prevent the Carrier from adding equipment and/or increasing an employee’s workload incrementally over time and thus, ultimately creating a “material change” in workload in total.

With respect to this latter argument, the Board has some sympathy and, if presented with evidence of such “workload creep,” might be inclined to come to a different decision. However, as an appellate body, the Board is restricted to making its

Form 1  
Page 6

Award No. 41832  
Docket No. SG-41718  
14-3-NRAB-00003-130347 (New)  
14-3-NRAB-00003-110319 (Old)

findings based on the on-property record evidence properly before it. There is no tangible evidence of such incremental workload increase in this particular case.

Given the 8.8% workload increase in evidence in the instant case, the Board finds that the Organization failed, in this instance, to meet its burden to prove that there has been a “material change.” Thus, it failed to prove a violation of Rule 28. Accordingly, the 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 20th day of March 2014.