Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31090
Docket No. SG-30969
95-3-92-3-866

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad:

Claim on behalf of K. R. Clem, et al., for payment of 40 hours at their respective overtime rates of pay, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized employees not covered by the Agreement to install standby generators at various signal locations beginning on July 30, 1991. Carrier's File No. 7SI 92-1-7. General Chairman's File No. D-1-92. BRS File Case No. 8854-BN."

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 waived right of appearance at hearing thereon.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute and filed a Submission with the Board.

In this claim, the Organization contends that Carrier violated the Scope Rule when it utilized employees not covered by the Agreement to perform the work of installing electrical generators to provide standby power for the operation of signal equipment.

The Organization recognizes that while the generators can be used to provide backup power for other equipment, it is clear that Carrier's installation of the generators was for the purpose of providing backup power for the new switch machines. Thus, it asserts that there is no question that the generators were installed only because of the power required for the new switch machines. The Organization argues that any subsequent use of the generators is simply incidental to their fundamental use as a standby power source for the signal system equipment.

Therefore, the Organization maintains that in accordance with previous decisions of the Board, the purpose for installing these generators establishes that this work is covered by the Scope Rule of the Agreement. Accordingly, and for the foregoing reasons, the Organization asks that the claim be sustained and that Carrier be required to make the appropriate payment of forty (40) hours at the overtime rate to each Claimant.

Carrier argues that it did not violate the Agreement. It maintains that Signal Department employees do not have the exclusive right to perform the installation of standby generators.

In addition, Carrier maintains that even if Carrier violated the Agreement, there is no basis on which monetary damages could be claimed. It argues that Claimants worked and were compensated during the period covered by the claim and did not suffer any loss of earnings.

Accordingly, for these reasons, Carrier asks that the claim be denied.

After a review of the record evidence, we conclude that the claim must be denied. The evidence is at conflict over whether the generators are solely back-up generators for signal equipment as the Organization claims, or whether the generators provide more than back-up functions, e.g. emergency power to the Automatic Equipment Identification System and microwave equipment. The Board cannot resolve this conflict on the basis of the record presented.

Since the Organization has the burden of proof in presenting its claim, we conclude that it has failed to carry its burden of proof.

Accordingly, and for the foregoing reasons, the claim is 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 September 1995.