

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32458
Docket No. SG-32933
98-3-96-3-304

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):

Claim on behalf of D. E. Malone, D. L. Alexander and C. V. Tewart for payment of 12 hours each at the straight time rate and three hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized other than covered employees to weld casings used for the installation of signal cable at the Galesburg, Illinois Classification Yards on April 5 and 6, 1995, and deprived the Claimants of the opportunity to perform that work. Carrier’s File No. SIA 95-07-06AC. General Chairman’s File No. C-21-95. BRS File Case No. 9891-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 were given due notice of hearing thereon.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

Under the Scope Rule 1 (H) the Organization claims that the Carrier violated the Agreement when it permitted Maintenance of Way employees to weld pipes for installation under the Hump Lead at Galesburg, Illinois. Rule 1 (H) includes "welding . . . of all classes in connection with installing . . . any signal apparatus or device." The Organization argues that the work was exclusively Signalmen's work and that the Carrier deprived the Claimants of the work when it permitted outsiders to perform the welding.

There is no dispute in this record that the work performed involved both a Maintenance of Way Welder and the Claimants herein. The Maintenance of Way employee worked together with the Claimants to weld casings that were installed under the hump. The Claimants held the pipe in place with cranes on their trucks and rotated the pipe so that the Maintenance of Way Welder could weld the casings together.

The Carrier denied any Agreement violation. It argued that the work was a joint project between employees from both Organizations and further, that the pipe not only held signal cable, but also supported the track structure. The Carrier stated that "this work is not reserved exclusively to Signalmen by agreement and has not been performed exclusively by Signalmen in the past."

The Organization has the burden of proof that the work performed is work that comes under the Scope of the Agreement. The Agreement Rule cited does not clearly prove in and of itself that the specific work performed was exclusively reserved to Signalmen and could not be performed as herein disputed by a Maintenance of Way Welder and Grinder Operator. The Organization did not support its argument of exclusivity after it was clearly rejected by the Carrier, supra. There was no rebuttal that the welded pipe supported the track structure which the Carrier argued permitted joint work with Maintenance of Way Welders. Accordingly, the burden of proof has not been met in this record.

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 21st day of January 1998.