

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32535
Docket No. SG-32932
98-3-96-3-303

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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, S.W. Boone, A.W. Buckley, C.V. Tewart, and B.F. Royer for payment of 280 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized other than covered employees to construct foundations for car retarders at the Galesburg, Illinois, Classification Yards from March 6 to April 21, 1995, and deprived the Claimants of the opportunity to perform that work. Carrier’s File No. SIA 95-07-07AA. General Chairman’s File No. C-22-95. BRS File Case No. 9890-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 and chose to file a Submission with the Board.

This is a Scope Rule claim, the substance of which is whether the work in dispute is covered by the Agreement and reserved to the Signalmen to the exclusion of all others. The work is identified as the construction of two concrete foundations for car retarder systems at Galesburg, Illinois. The work was performed by the Maintenance of Way Bridge and Building forces. These B&B forces formed, poured concrete and built the two new retarder foundations for the car retarder system in the Classification Yard at Galesburg. The Organization argues that this work belongs exclusively to the employees.

The Carrier denies exclusivity. The Carrier points out the B&B forces have historically built all of the these foundations in the past. It notes that although the work involved here includes Groups 1 and 2, the B&B forces built the previous ones for Groups 3, 4, 5 and 6. The Carrier also argues that these foundations support not only retarders, but also track structure. It denies any Scope Rule violation.

The Brotherhood of Maintenance of Way Employees filed a Third Party Submission arguing that the construction of concrete foundations for car retarders belonged by practice and Agreement to the B&B forces. The Brotherhood of Railroad Signalmen filed a rebuttal in support of this claim arguing that the BMWE had failed to prove the existence of such a practice throughout the Carrier's property and further, that such practice even if it did exist could not prevail over clear Agreement language.

As the moving party in an alleged Scope Rule violation, the Organization is obligated to demonstrate that the work accrues to its forces. This proof could either be demonstrated by explicit Agreement language or a demonstrable showing that its forces have exclusively performed this work.

The Organization's Scope Rule contains language that when fully read and contrasted to the instant circumstances is not persuasive. What is before this Board are two Scope Rules which when studied suggest the same work may be included in both

Agreements. The BMW Scope Rule, Part C is also found in the note to the Organization's Scope Rule and limits applicability to protect "pre-existing rights."

When we turn to the issue of exclusivity, it is clear that the Organization concedes that the work has been performed by B&B forces. The Organization did not rebut the Carrier's assertion that previous structures were built for Groups 3, 4, 5 and 6, nor the BMW's assertion that "B&B employees have historically constructed *all* concrete foundations for retarders throughout the entire system. . . ."

Accordingly, we are forced to conclude that the Organization's Scope Rule has limitations in its applicability when considered within the BMW's Scope Rule and the facts at bar. We are also forced to conclude that the work performed was not work exclusive to Signalmen. For these reasons, we are constrained to deny the claim.

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 25th day of March 1998.