

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32621
Docket No. SG-32934
98-3-96-3-305

The Third Division consisted of the regular members and in addition Referee James E. Conway 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 R.W. Bush and J. D. Williams for payment of eight hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it utilized a management employee to perform the covered work of blocking tracks and moving portable derails in connection with the installation of signal cables at the Galesburg, Illinois, Classification Yards on April 7, 1995, and deprived the Claimants of the opportunity to perform that work. Carrier’s File No. SIA 95-07-06AB. General Chairman’s File No. C-20-95. BRS File Case No. 9893-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.

Claimants challenge the use of a Signal Supervisor on April 7, 1995 to assist subcontractors in inspecting the yard preliminary to boring a hole prior to the installation of new signal cable under Carrier's tracks at Galesburg, Illinois. (The work performed by the contractor is the subject of a separate claim.) The claim asserts that in the course of protecting the subcontractor from rail traffic, Supervisor Chris Anderson and two BRS employees walked from bowl track to bowl track with a locating wand, moving portable derails in the process as needed to block rolling stock.

The Organization contends that Supervisor Anderson, instead of performing craft work himself, should have assigned a Foreman and a Signaller to accomplish this work. Citing violations of Rule 1 and Rule 2, the claim seeks eight hours at straight time rates for the senior qualified Foreman and Signaller headquartered at Galesburg at the time of the incident giving rise to the grievance.

Carrier argues that neither Rule 1, SCOPE, nor Rule 2, CLASSIFICATION, reserves the work in dispute for covered employees, or even specifically refers to it. Further, it asserts that this work has in the past never been performed exclusively by Signallers. Lastly, it contends that even if it had violated some rule or agreement by not assigning the work in question, there is no sound basis on which the monetary damages claimed could be awarded. The work in dispute took less than eight hours, and, in any event, Claimants were fully employed at the time and suffered no loss.

It is undisputed here that a management employee actively engaged in the work of track blocking and installing and removing portable derails. The Organization appears to concede that these tasks are common to several classes of employees, and not reserved exclusively for members of the craft, but pleads that when performed in connection with a signal construction project, such work accrues to them. In chief support, it cites two Awards.

Third Division Award 3638 dates back to the mid-1940's. It held in pertinent part that "The method of determining to which class . . . work belongs is by an examination of the reason for the performance of the work." That principle, however, has no demonstrated relevance here. Award 3638 is not based on an interpretation of the Scope Rule. It involves instead the issue of appropriate rates of pay under the Composite Service Rule for unskilled labor (tree cutting) performed by section hands

under the supervision of and for the benefit of the telegraph department. For *that* purpose, the Board found the work in question was that of Lineman Helpers and that Section Laborers were entitled to a higher rate of pay. We thus find Award 3638 to be interesting but not helpful on our issue.

The second case, Third Division Award 19525, is a 1972 case involving another carrier, a different agreement, and distinctly different facts. There the Carrier employed Electrical Department employees to install a 220 volt service connection to feed signal circuits, work performed traditionally by signalmen until 1962. The Board found a clear unilateral change of policy in regard to the assignment of the disputed work in the form of an internal company memorandum expressly announcing a new requirement that electrical personnel be used henceforth for such installations. Although the work at issue was not specifically mentioned in the Scope Rule of the Signalmen's Agreement, the Board concluded that the practice of assigning this work exclusively to the Signalmen for 27 years could not be changed unilaterally by company fiat. Accordingly, this Award likewise sheds little light on the issue before us.

Although we cannot confer on the prior Awards the same persuasive power that the Organization does, we recognize that the manner in which the Carrier accomplished the work at issue was not exactly brimming over with the spirit of Rule 1. But an Award favoring the Claimants requires more than the mere suggestion of indifference. The record developed on the property produced no documentation from which firm conclusions can be drawn regarding past practice relating to the specific work challenged, or even the precise circumstances under which it was accomplished here. In view of that fact, and in the absence of any monetary loss as a result of the actions challenged, the Board concludes that the Organization has failed to carry its burden of proof and denies 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 23rd day of June 1998.