

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36256
Docket No. SG-35537
02-3-99-3-447**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago &
(North Western)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of D. J. Zimmerman and D. E. Beck for payment of eight hours at their respective straight time rates, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 and Appendix “A” as amended, when it failed to utilize the proper employees to install and program highway crossing analyzers on the Boone Subdivision, on February 24 and 25, 1998. Carrier’s File No. 1136547. General Chairman’s File No. 8c012009. BRS File Case No. 10969-C&NW.”

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.

The facts are in dispute. The on-property handling shows that the Organization contends that the Carrier improperly used certain individuals (an Electronics Design Manager and a District Signal Foreman) to perform work claimed by the Organization (installing and programming highway crossing analyzers, making wire changes and retagging circuits) on the Boone Subdivision on February 24, and 25, 1998. In response, the Carrier asserts, in part, that the non-covered individuals did no work as alleged by the Organization, particularly tagging or wiring. Further, according to the Carrier, at one location a defective device was identified and Claimant D. E. Beck was contacted to replace the device.

This is a contract dispute. The burden therefore rests with the Organization to establish the necessary facts to show a violation of the Agreement. Based on the record before the Board, the material facts in this case are in irreconcilable conflict. The Organization asserts that certain work was improperly performed. The Carrier asserts that the work was not performed as alleged. A disputed factual record of this type cannot be used by the Organization to meet its required burden. The claim must therefore be dismissed.

AWARD

Claim dismissed.

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 28th day of October 2002.