

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37207
Docket No. MW-36660
04-3-01-3-199**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it called and assigned Signal Maintainer P. Jones to perform Maintenance of Way overtime service (clean snow from Switch #1) at CP7 on the Niagara Branch Line on March 12, 2000 instead of Maintenance of Way employee A. Tabone [Carrier's File 12(00-0215) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Tabone shall now be compensated for four (4) hours' pay at his respective time and one-half rate of pay."**

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 Railroad Signalmen was advised of the pendency of this dispute, and chose to file a Submission with the Division.

This claim involves the Carrier's assignment of Signal Maintainer Jones to overtime work at Switch No. 1 at CP7 in Albany, New York. The record reflects that at 12:50 CN train crew reported to the Conrail Dispatcher a failure at that switch and that they were able to operate it after removing snow from it. The Dispatcher made two trouble calls to Signal Maintainer Jones, one at 2:38 regarding the problem with that power switch operating improperly and one at 2:37 regarding a switch heater failure at Switch No. 7. According to the dispatch log, Jones cleared the switch heater problem at 4:42 and the Switch No. 1 problem at 7:00, determining that the only problem with the switch was the buildup of snow that he had cleared. The dispatch log reveals that the Claimant was called in to light CP7 switch heaters and clean snow from switches at 5:00. The Claimant worked 16 hours overtime on March 12, 2000, the claim date.

The Organization contends that the Scope Rule expressly reserves the work of snow removal from track structures to BMW-represented employees, citing Third Division Awards 32344 and 31752 as well as Special Board of Adjustment No. 1110, Award 76, and that any alleged past practice to the contrary is irrelevant in the face of clear language, and was not proven by the Carrier. It asserts that the Claimant was entitled to the snow removal work, and that the BRS did not cite any Rule from its Agreement entitling BRS-represented employees to such work.

The Carrier, as well as the BRS, argues that the Dispatcher acted in accordance with past practice on this property in assigning the trouble call concerning the operation of a signal to the Signal Maintainer. It asserts that they are entitled to perform any snow removal that occurs incidental to the performance of their normal functions, noting that the train crew and Signal Maintainer cleaned snow from one power switch that was necessary to the performance of their regular duties, and were not assigned to snow removal, as the Claimant was, relying on First Division Awards 17261 and 13787 as well as Third Division Awards 28820 and

17327. The Carrier contends that snow removal is not exclusive to the Organization, noting that the Scope Rule permits employees performing such work on the property previously to continue to do so, citing Third Division Awards 36759, 36510, 36271, 35838, 31925, and 30079. It relies upon Third Division Awards 37025, 37024, and 37005 in requesting that the claim be denied.

A careful review of the record on the property convinces the Board that the Organization failed to sustain its burden of proving that the Carrier violated the Scope Rule by its assignment of overtime work in this case. Unlike many of the cases relied upon by the Organization, the assignment in issue was not one of snow removal to either a contractor or other person not covered by the Agreement, but was to check on a problem with a switch that had been reported by a train crew during the night. The power switch is connected to the signal system, and it was appropriate for the Carrier to assign a Signal Maintainer to check the switch and to do whatever was necessary to assure that it was working properly. Any snow removal work done by the Signal Maintainer in this case was incidental to the performance of his normal duties, and did not violate the Scope Rule or the Claimant's right to perform snow removal work. See Third Division Awards 19186 and 17327. The fact that the Claimant was assigned snow removal overtime work on switches in the yard on the claim date further supports our conclusion.

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 28th day of September 2004.