

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37290
Docket No. SG-36884
04-3-01-3-450**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Burlington Northern and Santa Fe Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Santa Fe Railroad):

Claim on behalf of F. M. Klinger, K. D. Dawson and M. J. Carner for 18 hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on May 9 and 10, 2000 Carrier used outside contractors (Underground Piercing, Inc.) to bore and install conduit at a highway crossing in Little Falls, MN. Carrier's action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 34-00-0023. General Chairman's File No. TC-19-2000. BRS File Case No. 11753-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.

The Claimants were assigned to the Little Falls, Minnesota, signal crew when, on May 9 and 10, 2000 the Carrier retained an outside contractor to use hydropower technology to bore PVC pipe.

We find that the claim must be denied. The Board already held that the parties' Agreement does not reserve the work in question to the Organization. (See e.g., Third Division Awards 24538 and 32796). Moreover, the Organization's attempts to distinguish those Awards by asserting that the facts in those cases are distinguishable does not alter the fundamental contractual conclusion reached. Thus, we will follow that precedent.

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 17th day of November 2004.