

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37384  
Docket No. SG-37024  
05-3-01-3-666

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  
(BNSF 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:

Claim on behalf of D. E. Malone, M. J. Spah and C. C. McQueen, for 80 hours at the prevailing Signalmen’s rate to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1, the Scope Rule, when it allowed outside forces to remove signal lines and cable from the signal pole line from August 7, 2000 through August 14, 2000, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 35 01 0006. General Chairman’s File No. 01-005-BNSF-103-C. BRS File Case No. 11872-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.

At all relevant times herein the Claimants were employed as Signalmen on Signal Gang 134 with headquarters in Galesburg, Illinois. On the dates in question the Carrier utilized the services of an outside contractor to remove cable and copper line that the contractor had purchased from the Carrier. The Organization alleges that in doing so the Carrier violated the parties' Scope Rule, because the work in question should have been performed by bargaining unit personnel.

In arguing the claim the parties make much argument whether the cable and copper line in question were active. In our view however, that debate does not aid in resolving the claim because the record reflects that the cable and copper line that the contractor removed had been purchased by the contractor on an "as is, where is" basis. Thus, the cable and copper line were no longer the property of the Carrier and, as such, in accordance with other Third Division precedent (e.g., Awards 28488 and 28615) the claim must be denied.

**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 24th day of February 2005.