

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37388
Docket No. SG-37217
05-3-02-3-153

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 (BNSF):

Claim on behalf of D. P. Ventress, C. M. Haddad, T. J. Thibodeaux and C. J. Hebert, for 64 hours plus skill differential to be divided equally between the Claimants, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Attachment 7, when it used outside contractors to perform directional earth boring beginning on December 5 and 6, 2000, at New Iberia and Berwick, Louisiana, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 35-01-0018. General Chairman's File No. 01-028-BNSF-121-T. BRS File Case No. 11934-BNSF.”

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 at all relevant times herein were Signal Foremen assigned to Signal Gang No. 15314 with headquarters at Lafayette, Louisiana. On December 5 and 6, 2000 the Carrier utilized the services of an outside contractor to use directional boring to install conduit to house signal cable and wires to be used for highway grade crossings.

The Organization contends that in doing so the Carrier violated the parties' Agreement because there was a source from which the equipment in question could have been rented and thus, the Carrier should have rented the equipment and trained bargaining unit employees so that they would not lose the work in question. The Carrier denies that the source from which the Organization contends the equipment could have been obtained was in fact available. Thus, we find that we are faced with irreconcilable facts that preclude us from resolving the claims. Accordingly, because the Organization bears the burden of proof, we are compelled to reject 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 24th day of February 2005.