

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37389
Docket No. SG-37219
05-3-02-3-154

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 Signal Gangs #28309, #28306, and #28204 for 156 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 November 28, 29 and 30, 2000, at Gainseville, Texas and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 35-01-0019. General Chairman's File No. 01-026-BNSF-121-T. BRS File Case No. 11935-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.

On the dates in question the Carrier utilized the services of an outside contractor in conjunction with the installation of grade crossing protection systems in Gainesville, Texas, rather than assigning the work to the Claimants, who were members of the Signal Gangs named in the claim. Beyond that fact however, the parties disagree as to the extent of the work that the contractor did in fact perform. In other words, the parties disagree whether the contractor performed only directional boring or whether it engaged in other work as well. Moreover, the state of the record is such that we are unable to resolve that dispute of fact. Because the record is therefore deficient, we must find that the Organization failed to meet its burden of proof and 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.