

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37872
Docket No. SG-37218
06-3-02-3-143**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 R. A. Chinadle, D. K. Brandon, R. D. Manning, Jr., J. C. Kaessinger, A. M. Silk, L. E. Thaut, T. C. Cook and W. E. Jensen, for 12 hours each at their respective straight time rates plus skill differential, account Carrier violated the current Signalmen's Agreement, particularly Rule 1 (Scope) and Rule 2 (Classification), when it allowed non-covered contract forces to install a Truck Performance Detector at MP 45.2 on the Oregon Division on January 4 and 5, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 35 01 0014. General Chairman's File No. 01-024-BNSF-188-SP. BRS File Case No. 11931-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.

As background, Progressive Rail Technologies performed work on the Oregon Trunk, Oregon Division, on January 4 and 5, 2001. The Organization claimed that the work performed violated the Scope Rule (Rule 1) of the Agreement, as well as the Classification of Work Rule (Rule 2) in that a Truck Performance Detector was installed at Milepost 45.2 and said work belonged to BRS-represented employees.

The Scope Rule in pertinent part with regard to detectors includes:

"Hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, flood or other similar detector systems."

The Organization argues on the property that this work belongs to BRS-represented employees because it is a "similar detector system" which is reserved by the Agreement to Signalmen.

The Carrier denies any applicability of the Scope Rule to the installation of a Truck Performance Detector. It does not consider it to be "similar" and finds that there is nothing in the Agreement reserving this work to the Organization. As the Carrier states:

"The Truck Performance Detector does not provide any information to trains, nor is it intended to stop any trains if there are defects. It is strictly a mechanical department function and does not have any track circuits and is not tied in any way to the signal system."

The Carrier denied the claim arguing that the work was not covered by the Scope of the Agreement.

The Board carefully reviewed the on-property record. We cannot find support for the claim in the evidentiary facts presented by the Organization. The

Carrier argues that the work is not covered by the Scope Rule and the Organization asserts that it is work covered by the Scope of the Agreement. The dispute in "facts" remains, with the Organization failing to come forward with proof that the detectors are "similar" to those covered by the Scope Rule of the Agreement.

Additionally, the Board already considered this argument in a prior dispute. In our review of the claim presented in Third Division Award 37387, we find no difference in the fundamental issues, facts and dispute to the instant claim. Accordingly, we concur with Award 37387, and finding no additional proof or facts, deny the claim at bar.

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 1st day of August 2006.