

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37881
Docket No. SG-37795
06-3-03-3-143

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 D. J. Meech, R. D. Christianson, J. E. Griffin, L. J. Eich and C. J. Oksanen, for 34 hours of time and one-half rate of pay to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1, the Scope Rule, when it allowed non-covered employees to install permanent snow removal systems on switches at Northtown Yard on July 30 and 31, 2001, and on August 13 and 14, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 35 01 0062. General Chairman’s File No. 01-107-BNSF-154-TC. BRS File Case No. 12561-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 Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute and chose to file a Submission with the Board.

On July 30, 31, August 13 and 14, 2001, an outside contractor (directional boring crew) and IBEW-represented Engineering Department Electricians installed switch heaters at Northtown Yards in Minneapolis, Minnesota. The location of the work is on the former Northern Pacific (NP) Railway Company. The Organization argues that the work was performed on automatic snow removing equipment included in Rule 1 which states: "Blower, gas, electric or other types of automatic snow removing systems permanently located at switches." The Organization asserts throughout this dispute that the Scope Rule existed on the former NP and the work performed historically on that property associated with electric switch heaters was performed by Signal Department employees. As such, the Carrier violated the Agreement.

The Carrier argues that it did not violate the Scope Rule in the work assignment because the work performed had nothing to do with signal systems. The Scope Rule on the former NP property dealt with the "construction, installation, inspection, testing, repair, and maintenance of the following signal facilities in the field or in a signal shop." It further identified in Item (i) "... electric or other types of automatic snow removing systems permanently located at switches." Because the work performed at Northtown Yards was not a part of "signal facilities in the field or in a signal shop," was not located at switches, and was not reserved exclusively to Signalmen, its assignment to IBEW forces and an outside contractor did not violate the Scope Rule.

In its Third Party Response to the Board the IBEW pointed to its Agreement which includes work on "snowblowers (stationary) and snow-melting equipment, electric switch heaters, and electric controls and components of other-type switch

heaters." It argued that this work belongs to IBEW Electricians - not Signalmen. It stated that:

"The equipment noted in this dispute is directly related to the installation of switch heaters on hand-throw switches. The switches in question are not connected to a signal system in any way. . . ."

The Board reviewed the Scope Rule, the evidence of record and the arguments of the parties. Central to our decision is the nature of the work performed. The dispute centers on the installation of switch heaters on hand-throw switches. The Organization has the burden to demonstrate that this work belongs by Agreement to Signal employees.

A review of the Agreements between the Carrier and the IBEW and Signalmen does not clearly document that this work is Signalmen's work. The inclusion of prior Carrier statements from another claim is not on point and related to "hand-throw switches." A review of the nature of switches; from Cal Rod electric, remote controlled, those installed on Speed Freighter, or solar powered, does not demonstrate that "hand-throw switches" were by historical practice the work of the Claimants. The Organization has the burden of demonstrating that the electric switch heaters disputed in this record were those exclusively installed and maintained by Signalmen. This is absolutely essential when challenged by another craft as work belonging to that craft. It is made more important when a review of supporting documentation by Signal Maintainers does not refer to "hand-throw switches." The Organization's argument that it is entitled to all work on all switch heaters is made less persuasive by statements from the Carrier's Supervisors that there was no past involvement by Signalmen in "installing or maintaining a snow melter of any kind on any hand-throw switch."

The burden of proof has not been met to demonstrate that the work disputed belongs to Signalmen. The Board finds neither language nor past practice indicating that Signalmen have installed switch heaters on hand-throw switches. There is nothing in the language of the Agreement that explicitly includes hand-throw switches. There is no concrete proof that this work is recognized signal work. There is no denial that hand-throw switches are "not connected to the signal system in any way." Accordingly, the claim is denied.

**Form 1
Page 4**

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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.