

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37891
Docket No. SG-36733
06-3-01-3-239**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of T. A. Hitsman for payment of three hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly the Memorandum of Agreement dated November 5, 1981 when on February 19, 2000 Carrier used a District Signal Foreman to troubleshoot and make repairs to the No. 1 crossover Switch at CPA 155 in Marshalltown, Iowa. This action deprived the Claimant of the opportunity to perform this work. Carrier's File No. 12228828. General Chairman's File No. NART1-048. BRS File Case No. 11642-UP.”

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 March 20, 2000 the Organization submitted this claim asserting that the Carrier violated the parties' Memorandum Agreement of February 1, 1983 when Designated Signal Foreman (DSF) T. M. Nangle made temporary repairs to a cross-over switch near Marshalltown, Iowa, on February 19, 2000.

The Organization argues that the work Nangle performed - troubleshooting and making repairs to bolts on the throw rod of a switch that had been rubbing against the ties - was hardly work incidental to the duties of a supervising employee. It further maintains that the Claimant was available for the trouble call.

The Carrier denied the claim on grounds that two of the regularly assigned Maintainers had checked out and were not available for call until 7:00 A.M. on February 22 and the third had marked off sick until February 21. Under those circumstances, it asserts, and given the fact that the work was incidental to his primary duties, the claim is groundless.

For the reasons that follow, the Board concludes that the claim should be denied. Appendix 'A' of the Agreement the Claimant relies upon reads in part as follows:

"Appendix 'A'

District Signal Foreman will supervise the work of employees of lower classifications in their district, and shall perform work coming within the Scope of the Signalmen's agreement, effective January 1, 1982 when incidental to, or as a consequence of, their duties."

Reduced to basics, DSM Nangle inspected and made temporary repairs to a signal switch that was getting hung up in reverse position when no regular Maintainers, including the Claimant, were available for the trouble call. As a covered employee, Nangle not only fell within the Scope of the Agreement, but also

was expressly allowed to perform the disputed work as a normal incident of his responsibilities. The contrary view is organically out of step with and has been so frequently elbowed aside by prior Third Division Awards that string citation of that authority is pointless. See, e.g., Third Division Award 36402. (Repair work on signal crossing performed by DSM when regularly assigned Maintainers were unavailable held to be "incidental work which was a consequence of a Foreman's responsibility" and "well within the parameters of the negotiated concept of work permitted to be performed by District Signal Foremen.")

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 22nd day of August 2006.