

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38220
Docket No. SG-38173
07-3-04-3-90

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(CSX Transportation, Inc

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Louisville & Nashville):

Claim on behalf of S. P. Skinner Jr. and R. M. Petty, for 5 hours each at the overtime rate of pay, account Carrier violated the current Signalman’s Agreement, particularly Rule 1 (Scope), and Rules 7, 17 and 18, when on November 30, 2002, track department employees, who are not covered by the Signalmen’s Agreement, were used to install insulation in the #2 and #3 switch rods at North Holts Corner, TN, instead of calling and using the Claimants to perform the covered work. Carrier’s File No. 15(03-0026). General Chairman’s File No. 03-178-20. BRS File Case No. 12761-L&N.”

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 Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference was advised of the pendency of this dispute and chose to file a Submission with the Board.

At issue is the replacement of fiber insulation for bolts attached to the No. 2 and No. 3 switch rods of the switch at North Holts Corner, Tennessee. The Organization maintains that this represents work reserved to BRS-represented employees. As in all claims of this nature, the burden of persuasion is on the Organization to prove that the work concerned has, by the Agreement or by custom and practice been reserved to BRS-represented employees.

A careful reading of the record indicates that the switch rods in question are not connected to the signal system. There is no evidence in the record that the work in dispute was ever reserved to the Organization. Specifically, there is no mention of the work in the Scope Rule of the Agreement between the Organization and the Carrier, nor is there any evidence that the work at issue was by tradition and custom performed by BRS-represented employees. Thus, the Board finds that the Organization has not satisfied its burden of proof in this matter, and the claim must be denied.

AWARD

Claim denied.

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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 25th day of June 2007.