

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39373
Docket No. SG-38862
08-3-NRAB-00003-050295
(05-3-295)**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Rail
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of T. H. Stone, G. M. Jones, D. P. Romaniszak and C. J. Fatora, each for 118 hours at their overtime rate of pay and 56 hours at their straight time rate of pay, and for T. A. Fullgraf, T. D. Humay, A. Deamantopulos and A. Smith, each for 50 hours at their overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to flag and protect road crossings at Edgington Street and Rose Street on the Milwaukee District, from May 24, 2001, until June 2, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 11-3.3-336. General Chairman’s File No. 20-CM-01. BRS File Case No. 12495-NIRC.”

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.

The Carrier used non-covered employees (BMWE-represented employees) to perform flagging functions on the dates and at the locations set forth in the claim.

The Scope Rule provides, in relevant part:

“This agreement covers the rate of pay, hours of service, and working conditions of all Signal Department employees classified herein engaged in the construction, repair, installation, inspection, testing or maintenance, including such work performed in the railroad’s Signal Department Shops, of the following:

- (a) . . . highway crossing protective devices, other than mechanically connected or pneumatic highway crossing gates. . . .

* * *

- (m) All other work generally recognized as Signal work.”

The Scope Rule does not exclusively reserve flagging to covered employees. Flagging is not even mentioned in the Scope Rule. Absent such a specific reservation of work by the Scope Rule, the Organization must demonstrate a system-wide pattern of exclusive performance of such work by covered employees. That has not been done in this case. While covered employees can perform flagging functions, the evidence also shows that in the past other individuals such as Engineering Department Electricians, Maintenance of Way employees, Trainmen, local police and the Carrier’s police have performed flagging functions at grade

crossings on the Carrier's property. The claim therefore lacks merit and must be denied. See Third Division Award 23537:

"Upon careful examination of the Scope Rule we do not find that the work of flagging is exclusively reserved to the Brotherhood of Railroad Signalmen. In the absence of such clear and unambiguous contract reservation, the Organization must demonstrate a system wide pattern of exclusive performance to reserve such work to Signalmen. To the contrary, evidence presented on the record indicates that such diverse persons as Maintenance of Way Employees and 'local police' have been assigned the work of flagging when automated signal devices have failed."

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 8th day of December 2008.