Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 39383
Docket No. SG-39045
08-3-NRAB-00003-050471
(05-3-471)

The Third Division consisted of the regular members and in addition Referee Joan Parker when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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:
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> Claim on behalf of J. L. Ely for 9.5 hours straight time, R. E. Simpson and C. W. Vogt for 9 hours each straight time, and J. N. Walton for 8 hours straight time at their respective rate of pay, account Carrier violated the current Signalmen's Agreement, particularly the May 29, 2003 Noon Meal Agreement, when it required the Claimants to perform signal maintenance work at Pasco Yard in Pasco, Washington, during a period of July 12, 2004, through August 31, 2004, and failed to compensate them for an additional 30 minutes straight time per day as required by the Agreement. Carrier's File No. 35 04 0040. General Chairman's File No. 04-097-188-SP. BRS File Case No. 13196-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.

At the time of this dispute, Claimants Vogt, Simpson, Ely, and Walton were assigned to the Pasco Signal Crew working out of Pasco, Washington. On September 9, 2004, the Organization filed a claim on behalf of the Claimants, alleging that the Carrier violated Rule 2 and the Noon Meal Agreement when it required the Claimants to perform maintenance work at Pasco Yard on July 12-16, 19-23, 26, and August 3, 4, 9, 23, 24, 26, 27, and 31, 2004 and failed to pay them an additional 30 minutes straight time per day. According to the Organization, the maintenance work consisted of adjusting and repairing existing switch machines and derails, repairing and replacing existing signal cable, and repairing retarders throughout Pasco Yard.

In the Organization's view, on the dates at issue, the Claimants temporarily became a maintenance crew, performing the duties of "Foreman/Maintenance Foreman," "Signalman/Maintainer," and "Assistant Signalmen/Signal Maintainers," as outlined in the Classification Rule. The Carrier denied the claim, contending that none of the Claimants belonged to any classification covered by the 2003 Noon Meal Agreement. Specifically, the Carrier pointed out that during the claim period, Claimant Vogt was actually a Signal Crew Foreman; Claimant Simpson was a Signalman; and Claimants Ely and Walton were both Assistant Signalmen. The Carrier emphasized that the Noon Meal Agreement identifies each classification and position covered, and inasmuch as the Claimants were not specifically included in the Agreement, they were not entitled to the allowance.

The claim was duly handled on the property and was discussed in conference on February 1, 2005. The parties' positions remained unchanged, and the Organization therefore submitted the dispute to the Board for adjudication.

The duties of the Maintenance Foreman, Signal Maintainer, and Assistant Signalman-Assistant Signal Maintainer are expressly set forth in Rule 2 of the

Agreement. The May 29, 2003 Noon Meal Agreement states as follows in Paragraphs 1 and 3:

> "1. This Agreement applies to employees in the signal department in the following classifications and positions:
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> Signal Electronic Technician
> Control System Electronic Technician
> Retarder Yard Specialist
> Signal Inspector
> Maintenance Foreman
> General Signal Maintainer
> General CTC Maintainer
> Leading Signal Maintainer
> Vacation Relief Maintainer
> Signal Maintainer
> Signal/Safety Trainer
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> * * *
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> 2. On all other days when an employee works at least the number of hours specified in this paragraph, employees in the classes and positions identified in paragraph 1 will be paid an additional 30 minutes at the straight time rate of pay and no lunch meal expenses will be claimed or reimbursed on those days. The employee must work at least 4 hours on the day for which this allowance is claimed."

The Organization argues that the Claimants were performing maintenance work and thus operating in the classifications covered by the May 29, 2003 Agreement. It asserts that the parties intended to pay a noon meal allowance to all journeyman signal employees performing maintenance duties, except when meals are associated with an "overnight stay away from home." There was no overnight stay away from home in the instant case. Moreover, according to the Organization, in the past when crew Signalmen have been used to temporarily relieve Maintainers

who were absent, such as for vacation, the Carrier paid those employees the Noon Meal allowance, even though they were awarded positions of Signalmen/Assistant Signalmen on the crew.

The Board carefully reviewed the record, and it is compelled to find that the clear language of the Agreement requires the denial of the claim. Paragraph 1 of the May 29, 2003 Noon Meal Agreement states: "This Agreement applies to employees in the signal department in the following classifications and positions. . . ." A specific list of classifications follows. That list does not include the positions on the Pasco Signal Crew which the Claimants held: Signal Foreman, Signalman, and Assistant Signalman. While the Organization contends that the Claimants temporarily became a maintenance crew with a Maintenance Foreman, Maintainers, and Assistant Signal Maintainers, there is no merit in that contention. If the parties had intended the May 29, 2003 Agreement to apply to any employee performing maintenance duties, they would have so stated in the Agreement.

The May 29, 2003 Agreement does not reflect a mutual intent to pay employees based on the nature of the work they are performing. Instead, the parties elected to tie the contractual scope to the employees' classifications.

The Carrier contends persuasively that one reason the Signalmen and their Foremen were excluded from the 2003 Agreement was because the parties intended to establish a set daily amount for the meal for Maintainers, who had previously been receiving a variable meal allowance; that history is referenced in Section 4 of the 2003 Agreement. But Signalmen had not been receiving the meal allowance at all prior to the 2003 Agreement, and they were not included under that Agreement either.

But even if the Signalmen's exclusion from the 2003 Agreement were not based upon a particular reason, the plain language of that Agreement must control the outcome of this dispute. It has long been recognized that an arbitrator's primary task is to ascertain and give effect to the mutual intent of the parties. Manifestly, clear contract language is the best indicator of that mutual intent. Here, the language of the May 29, 2003 Agreement is clear and unambiguous. Hence, it must be applied as written without resort to extrinsic evidence. While the

Organization argues that the Claimants became temporary maintenance employees, it has not identified any contractual basis to support its contention that the work they were assigned on the days in question somehow altered their previously awarded classifications as members of the Pasco Signal Crew.

Furthermore, the Note to Rule 2 states:

> "This rule shall not be construed to prevent employees in one class from regularly performing work in another class incidental to the duties of their assignments."

Thus, while Signalmen may perform construction, especially on larger capital projects, there is no contractual language forbidding them from performing some tasks that may be referred to as "maintenance." Moreover, the fact that they occasionally do such "maintenance" work does not mean they acquire the Maintainer classifications covered under either Rule 2 or the May 29, 2003 Agreement. In this regard, the Board also notes that the Organization has not argued that the Carrier should have paid the Claimants the higher Maintainer rate of pay instead of their regular Signalman rate for the days involved in the claim. As the Carrier points out, the Organization's failure to file any claim requesting the higher hourly pay rate "stands as a tacit admission that the Claimants were not performing any work different from their normal assignments as a Signal Crew."

Undisputedly, the Claimants' classifications are excluded from the scope of the Agreement, and the Board may not modify that Agreement through arbitral fiat. As was held in Public Law Board No. 1740, Award 2:

> "It would be unwarranted and untoward for this Board to insert a non-existent provision into a contract by interpreting or construing said contract. The solemnity and dignity which our system of law invests in written contracts precludes this Board from finding, by implication, that a non-existent provision exists in a written contract."

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.