

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39702
Docket No. SG-38303
09-3-NRAB-00003-040228
(04-3-228)**

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson 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:

Claim on behalf of J. A. Schon, for 12 hours pay at the pro rata rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 ‘SCOPE,’ and Rule 2, ‘CLASSIFICATION,’ when on March 18, 21, 23, 24, 26, 28 and 30, 2003, and April 1, 3 and 4, 2003, Carrier allowed non-covered employees (track department forces) to test and inspect various detector systems (hot box, high wide load, dragging equipment, etc.) at MP 174.4 and MP 181.4 on the Claimant’s assigned territory, and deprived the Claimant of the opportunity to perform this work. (Carrier’s File No. 35 03 0059; General Chairman’s File No. 03-052-BNSF-33-K; BRS File Case No. 12982-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.

The claim contends the Carrier violated Rules of the Signalmen's Agreement when it arbitrarily assigned employees of its Maintenance of Way Department to perform work reserved to Signal Department employees, namely, the testing and inspecting of track-side detector systems.

The Organization asserts that Rule 1, "Scope," and Rule 2, "Classification," of the current Agreement, clearly states that inspection and tests of detector systems is work preserved to Signal Inspectors and Signal Maintainers.

The Carrier denies any violation. It says that it has installed hot box and dragging equipment detectors at various locations that protect by Radio Reporters (Talkers) that are equipped with exception reporting to minimize radio congestion in those areas where there are closely spaced detectors. The system is designed to talk to trains only when there is an alarm, and the software is designed to say, "system working," whenever on-track vehicles with only two track dolly wheels per rail pass by the detector. This feature, the Carrier says, allows track force workers to automatically test or note the functionality of the system just by driving by in most types of hy-rail vehicles.

In this same respect, the Carrier submits that its instructions prescribe that if the exception reporting detector does not say, "system working," over the radio when passed by an on-track vehicle with only two track dolly wheels per rail, the employees are to immediately notify the Signal Call Desk in Fort Worth, Texas, so that Signal Department employees can be called to repair the detector.

The Carrier says most of the time, the Maintenance of Way Department employees observe the functionality of the detector system as they hy-rail past them, and never stop or leave the vehicle. It is only if the detector is on an adjacent track to the one that is being hy-railed, the Carrier says, would it be necessary for Maintenance

of Way employees to stop, exit the vehicle, and pass a metal object over the wheel detection unit. Even then, the Carrier says, the entire process would take less than five minutes.

The Organization says the Carrier's five minute assertion is irrelevant and not accurate. What is relevant, it says, is the time it would take for a Signal Maintainer to make a proper test of the system and to record the result. It says, not counting the time involved to travel to the detector site, there is the time involved to check on trains, fill out the necessary on-track protection statement, hold a job briefing, activate the detector, and record the results. Thus, the Organization says the 30 minutes per detector as set forth in the Statement of Claim is a minimum amount of time necessary to complete the task.

In the opinion of the Board, study of the record fails to show what specific work in question was performed by the Maintenance of Way Department employees and the extent of time that was consumed to do so. The record also fails to show probative support for the assertion Maintenance of Way Department employees were required to exit their vehicles to observe or test the detectors on the dates of claim. Moreover, the Board is not persuaded by Organization argument that the amount of time required to make an observation or test of a detector would be, as claimed, 30 minutes for each detector. Clearly, in passing over a track in the normal course of Maintenance of Way duties and observing and noting the functionality of such detectors, and calling the Signal Desk to report a detector found not to be functioning, would consume an insignificant amount of time.

Accordingly, because the Board finds the Organization, as the petitioner of the claim, not to have met a necessary burden of proof to substantiate its several arguments that the work at issue is specifically reserved to Signalmen, the claim will 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 26th day of May 2009.