

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40313
Docket No. SG-40322
10-3-NRAB-00003-080016**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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. H. Bishop, B. A. Forbrich, R. E. Kline, and D. R. Smith, for payment of 20 hours each at their respective straight time rates, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when on May 18, 2006, it allowed employees of an outside Contractor (City of Tacoma) to install automated horn systems including train signals, to use in conjunction with Automatic Highway Crossing Protection at McCarver Street in Tacoma, Washington, on the Seattle/Portland Seniority District, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 35-06-0036. General Chairman’s File No. 06-031-BNSF-188-SP. BRS File Case No. 13829-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.

This dispute arose when the City of Tacoma contracted for the installation of an Automated Horn System (AHS) at McCarver Street in Tacoma, Washington, in May 2006. The instant claim alleges that the Carrier violated Rule 1 (Scope) of the Agreement when it allowed employees of the City of Tacoma to install the AHS, thereby depriving the Claimants of the opportunity to perform the work. The Organization contends that the Scope Rule covers the installation, construction, and maintenance of highway crossing signal systems and all appurtenances used in connection with installation of signal systems. To the Organization, it is clear that the Carrier violated the Agreement when it diverted this work to outside forces. The Carrier should now be required to pay the Claimants 20 hours each at their respective straight time rates to compensate them for this loss of work opportunity.

The Carrier contends that there was no violation of the Agreement. Because the City of Tacoma installed the AHS at its expense, at its instigation, under its control, and for its sole benefit, the work is not scope-covered. Moreover, the Carrier argues that the AHS is not an appurtenance to the signal system. The AHS is an external indicator installed by a local government and is neither tied into the Carrier's signal system, nor an appurtenance to the signal system.

The issues herein have been raised before and decided in the Carrier's favor. In Third Division Awards 36339 and 37063, the Board recognized that where city municipalities installed an Automated Horn System (AHS) at grade crossing locations at their own expense, for their benefit and under their control, the work does not violate the Scope Rule of the Agreement. Moreover, in Third Division Award 37203, the Board rejected the Organization's argument that the AHS is an appurtenance of the signal system and concluded that there had been no violation of the Scope Rule. There is nothing in the instant case that would dictate a different result. The record demonstrates that the Carrier did not contract for the installation of the AHS, nor did the Carrier pay for any part of the installation. The equipment was installed by the City of Tacoma for its benefit, at its expense, and the

project was entirely under its control. The Organization's assertion that the AHS is an appurtenance is inconsistent with arbitral precedent. For all these reasons, we find that the work does not fall within the Scope Rule and the Organization's claim must be denied.

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 1st day of March 2010.