

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40314
Docket No. SG-40415
10-3-NRAB-00003-080130**

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 K. Walker, for five and one-half hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 Scope, when it used a non-covered employee to assist a Signal Maintainer retrieving portable generators at State Route 94 at M.P. 33.36, Intermediate Signal at M.P. 47, Dalbow Road at M.P. 48 and Sycamore Street at M.P. 51.65 on Saturday, July 22, 2006 and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 35-06-0042. General Chairman’s File No. 06-041-BNSF-20-C. BRS File Case No. 13822-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 a BMW-employee assisted a Signal Maintainer with the retrieval of portable generators from four locations on the Hannibal Subdivision on July 22, 2006.

In its initial claim, the Organization contended that the Carrier's action violated Rule 1, the Scope provision of the Agreement, and particularly Paragraphs C and G, which read as follows:

"RULE 1. SCOPE

This agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, reconstruction, reconditioning, installation, reclaiming, maintenance, repair, in section and tests, either in the signal shop, or in the field of the following:

* * *

C. High and low voltage signal lines, overhead and underground, including poles, cables, cross arms, wires, tie wires, insulators, guy wires, messenger cables, rings and other fixtures and equipment used in connection therewith, conduits and conduit systems, transformers, arresters, and distributing blocks used in connection with the systems, devices, or equipment covered by this agreement; inside and outside wiring of all instrument houses, cases, panels, boards, as well as all cable, where used in connection with the systems, devices, and equipment covered by the scope of this agreement; track bonding, installation of all types and kinds of bonds, including lightning and static electricity bonding; lighting of all instrument houses, cases, panels, boards, etc., used in the systems and devices covered by the scope of this agreement, not including the

general lighting of interlocking tower buildings, shop buildings and common headquarter buildings.

* * *

G. Storage battery plants with charging outfits and switchboard equipment, substation and current generating systems, compressed air plants and compressed air pipe mains and distributing systems as used for the operation of such railroad signaling and interlocking or retarder systems. . . .”

The Organization asserts that these scope provisions of the Agreement identify the work in question and exclusively reserve the work to the BRS craft. The Organization argues that a BMWWE-represented employee has no shared interest in the equipment or work specifically reserved to the Organization. The Carrier, on the other hand, contends that the Organization failed to prove that the work is within the scope of the Agreement or that BRS-represented employees have exclusively performed the disputed work by practice, custom, or usage.

The Board concludes that the Scope Rule of the Agreement between the Organization and the Carrier, while describing in some detail work belonging to the Organization, does not cover the retrieval and transporting of portable generators. Moreover, there is no evidence that Organization-represented employees have historically performed the work in question to the exclusion of other crafts. The Board’s conclusion in this regard is bolstered by the precedent Awards on this same subject, which have denied claims under the same or substantially similar factual circumstances. See Third Division Awards 17960, 18060, and 22381.

It should be noted that the Organization shifted its argument during claim handling and contended that portable generators are appurtenances covered under Paragraph B of the Scope Rule. Even if we were to consider this argument as timely presented, it does not change the result. Rule 1(B) states:

“B. All appurtenances, devices and equipment used in connection with the systems cited in Paragraph A, regardless of where located and how operated, and devices covered by the scope of this

agreement, as well as any other work generally recognized as signal work.”

The Organization did not establish that the generators were being used in connection with the systems cited in Paragraph A. At the time they were handled by the BMW-employee, they were merely being loaded for transport and unloaded.

Under all these circumstances, we find that the Organization failed to meet its required burden as the moving party in this dispute. Accordingly, the 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.