

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40315
Docket No. SG-40432
10-3-NRAB-00003-080249**

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. G. Lokken, J. W. Ritchie, A. J. Robinson, J. L. Volkening and S. D. Williams, for 539.5 hours straight-time and 131.5 hours time and one-half plus skill differential pay to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1, Scope, when it allowed an outside contractor to install a “Super Detector” at M.P. 372.256 on the St. Croix subdivision at Stockholm, Wisconsin from October 30, 2006 through November 21, 2006 and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 35-07-0007. General Chairman’s File No. 06-049-BNSF-20-C. BRS File Case No. 13891-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 instant claim arose when an outside contractor installed a "Super Detector" at M.P. 372.256 on the St. Croix Subdivision at Stockholm, Wisconsin, during the period of October 30 through November 21, 2006. The Organization contends that this was work reserved to Signalmen under the Scope Rule of the Agreement. It is argued that the Super Detector system is similar in function and purpose to other detector systems installed and maintained by BRS-represented employees. To the Organization, the Super Detector is simply a new piece of equipment that detects defects and clearly falls within the scope of the Agreement.

The Carrier contends that the disputed work does not fall within the scope of the Agreement. It argues that the Scope Rule is specific in coverage and does not reserve Super Detectors to Signal employees. Failing to show specific reservation of this work under the Scope Rule, the Organization had to prove an exclusive system-wide practice of assigning the work to BRS-represented employees. There is no evidence in this record to support such a finding, the Carrier submits. Moreover, the Organization was unable to establish that the equipment is similar to other detectors which are specifically enumerated in the Scope Rule. Unlike detector systems which fall within Scope Rule coverage, the Super Detector does not provide information to trains, cannot stop a train if a defect is discovered, and is not tied into the signal system.

The Scope Rule on this property is specific in coverage. The only reference to detectors is in Section A, which reserves to Signalmen the installation and maintenance of "hot box, broken flange, broken wheel, dragging equipment, slide, high and wide load, floor or other similar detector systems" when connected to or through automatic block or interlocking systems." (Emphasis added) Based on the evidence presented in this record, we are not convinced that the Organization proved that the Super Detector is similar in purpose or function to those detectors listed in Rule 1, Section A of the Agreement. While it does perform a whole host of functions, overall it must be concluded that the Super Detector falls outside the scope of coverage because it does not provide any information to trains; it does not

stop any train if a wheel condition is detected that exceeds a preset value; and it is not tied in any way to the signal system. See Third Division Awards 37387, 37872, and 37884. There is also no evidence that the Organization's members have installed Super Detectors as a matter of custom or historical practice.

Under these circumstances, the Board has no alternative but to deny the claim.

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.