

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40635
Docket No. SG-40384
10-3-NRAB-00003-080220**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of W. Reaves, for 64 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and Rule 2 (Classifications), when it used a supervisor instead of the Claimant to perform pre-cutover testing on signal equipment at County Interlocking on August 3, 11, 17 and 24, 2006 and on September 1, 7 and 14, 2006 and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. BRS(S)-SD-1095. General Chairman’s File No. AEGC-07-102-2. BRS File Case No. 13845-NRPC(S).”

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 by the Organization is that on August 3, 11, 17, 24 and September 1, 7 and 14, 2006, ARASA Supervisor R. Vogel performed work that belonged to BRS-represented employees. Specifically, the Organization argues that as part of pre-cutover testing, the Supervisor violated Rule 1 (Scope) and Rule 2 (Classifications) in changing input and output cards in the micro processing unit. The Organization argues that the Supervisor has the right to lead and direct testing, but has no right to violate the Agreement by performing work that belongs to the Organization. As stated, “[T]he Electronic Technician is responsible for the field testing and replacement of such components for train control.” It requests the time and one-half rate of pay for the lost work opportunity.

The Carrier argues that the work involved pre-cutover testing and was not a violation of the Agreement. The work performed was not exclusively reserved, nor was input and output of cards a system-wide practice that provided the employees the right to this work. In fact, the Carrier argues that the Supervisor was entering the cards to display routes so BRS-represented employees could properly perform their pre-cutover field testing. In changing the input and output cards in the micro processing unit, the Supervisor was properly leading and directing subordinates, not violating the Scope or Classifications Rules. As for the requested penalty, it is inappropriate on this property.

In the Board’s review, the pertinent parts of Rule 1 and Rule 2 have been considered. Rule 1 (Scope) states that the C&S employees protect work, “. . . engaged in the installation and maintenance of all signals, interlockings . . . and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone or signal work. . . .” Rule 2 (Classifications) enlarges upon the Electronic Technician indicated in Rule 1, stating that the position is “. . . responsible for the field maintenance, testing, adjustment, repair and replacement of electronic and electromagnetic components associated with C.T.C. . . . and any other similar systems in the Communication and Signal Department An Electronic Technician may direct other C&S Department employees in connection with these duties.”

The Claimant was an Electronic Technician. Given the above, he had responsibility for the disputed work. The Board notes that the Carrier initially stated agreement, except only under “normal circumstances” and not when it was pre-testing and out of service. The Organization refuted that, and further noted that in-service cards were being removed and re-installed by the Supervisor. The

Board also notes that the Organization's argument that the "Electronic Technician is responsible for the field testing and replacement of such components for train control" is on point with these facts.

The Carrier argued strongly before the Board that the work is clearly analogous to that upheld in other Awards, particularly, Third Division Award 35550. The Board finds Award 35550 materially different and not on point. There is nothing in this claim that indicates that Supervisors had been performing this work on the property for more than a decade. Nor is there any argument that the work was not performed on the claim dates. Certainly, the issue of exclusivity is relevant, but where, as here, the Scope Rule is clear that this disputed work belongs to BRS-represented employees, the point is not decisive. The Scope Rule protects "all" of the work herein disputed.

While the Scope Rule does not protect all work associated with inspection, when, as here, it involves the input and output of cards for testing, it belongs to BRS-represented employees. There is sufficient proof that the equipment was in service and because the work was scope protected, it belonged to BRS-represented employees by the language of the Agreement.

The Carrier clearly argued that the input and output of cards for testing did not belong to BRS-represented employees. On that point, the Carrier stated:

"Electrician Technicians do not have, either by labor agreement or system-wide practice, the exclusive right to touch input and output cards. The Employees have not and cannot prove otherwise. In changing the input and output cards, the supervisor was merely leading and directing subordinates by displaying routes so that BRS employees could do pre-cutover testing in the field." [Emphasis added]

The Board carefully reviewed the on-property record and the language of the Scope Rule. The Carrier acknowledged the work belonged to the Claimant under "normal" circumstances under the Agreement. The Board is not persuaded after a full study of the record that the equipment was either out of service or that somehow, this was not a "normal" situation. We are convinced that this work belonged to the Claimant. As an Electronic Technician he should have performed or supervised the work if it involved other Signalmen. We are persuaded that the

Scope Rule protected “all” such work of pre-cutover testing at County Interlocking when the Supervisor removed and installed input and output cards in the RTU, “field testing and replacement of such components for train control” (see Third Division Awards 20510, 18808 and 4828).

Although the Board must partially sustain the claim, we are again confronted with the issue of damages. The Organization claimed time and one-half pay, a position the Board has variously concurred and denied in other claims. In this case, we are forced to deny. The Carrier stated: “It is well established that the proper penalty on this property for loss of work opportunity is payment at the straight time rate.” There was no rebuttal and it stands before us as fact. The claim will be sustained at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of August 2010.