

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43277
Docket No. SG-43650
18-3-NRAB-00003-160198**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 BNSF Railway Company:

Claim on behalf of D.B. Cape, T. Kisor and C. Snelson, for each to receive 5.5 hours at their respective straight time rates of pay and 1 hour at their overtime rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1(C), when it permitted Maintenance of Way section track forces to replace working signal poles on the Slaton sub between Slaton and Burris Texas at Mile Post 684.5 on September 3, 2014, and thereby denied the Claimants the opportunity to perform work exclusively reserved to them by the Agreement. Carrier’s File No. 35-15-0013. General Chairman’s File No. 14-046-BNSF-161-NM. BRS File Case No. 15262-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 Organization filed the instant claim on the Claimants' behalf, alleging that the Carrier violated the Agreement when it allowed Maintenance of Way forces to perform work exclusively reserved to signalmen by the Agreement, thereby denying the Claimants this work opportunity on September 3, 2014. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work at issue was Scope-covered work that is exclusively reserved to employees covered by the BRS Agreement, because the Claimants were available to perform the work, because there is no merit to the Carrier's positions, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because emergency conditions granted the Carrier greater latitude in the assignment of Carrier forces, because the Organization has failed to meet its burden of proof, and because there is no support in the record for the requested monetary remedy.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it permitted Maintenance-of-Way-represented employees not covered under the Signalmen Agreement to replace live working signal poles on the Claimants' assigned territory. The work at issue is clearly reserved to the signalmen and the Claimants in this case should have been afforded the work opportunity. Rule 1, Scope Rule, clearly includes the work at issue in this case.

Once the Board has determined that there is sufficient evidence in the record to support the Organization's case, we next take a look at the remedy that is requested. Given the work that was performed in this case, the Board orders that the Claimants are entitled to five and one-half hours of straight-time and one hour of overtime for the Scope Rule violation.

AWARD

The claim is sustained. The Claimants are awarded five and one-half hours at their respective straight-time rate of pay and one hour at their overtime rate for the violation of the Agreement.

Claim sustained.

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 26th day of June 2018.