

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Baltimore & Ohio  
Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the  
Brotherhood of Railroad Signalmen on the CSXT, Inc.  
(Former B&O Railroad):

Claim on behalf of F. E. Clawson, for payment of compensation of 360 hours pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule, when it purchased wear plates for switch machines on August 15, 1989." Carrier file 15 (90-35). BRS Case No. 8354-CSXT.B&O

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 employees 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 waived right of appearance at hearing thereon.

The Organization alleges a violation of the Agreement when the Carrier "...allowed or permitted a contractor to perform the construction of 51 sets of wear plates in connection with the Carrier's signal system."

In its initial denial [March 29, 1990] on the property, the Carrier advised that:

"The wear plates were purchased for a large TCS project on the former B&O property, but at this time, the project has been deferred. The purchasing of sets of wear plates is no different than purchasing any other part of a switch machine that is used in the refurbishing process of the machine.

The purchase of parts to be used in the repair and refurbishing of signal equipment has been and still is purchased from outside vendors is not a violation of the current scope Rule.

Also, my investigation reveals that none of the 51 sets of wear plates purchased have been used in the refurbishing of switch machines in the shop and that you have been and are currently manufacturing wear plates for GRS Model 5 type machines."

In its July 5, 1990 denial the Carrier reiterated that:

"There is no rule which restricts the Carrier's right to purchase signal parts and apparatus, and the purchase of wear plates is not a violation of any agreement or rule...."

While the record indicates that the Carrier purchased the wear plates, there is nothing of record to suggest that the Carrier used them. Regardless of the various arguments of the parties concerning the appropriate contract interpretation by the Organization, the extent of the scope clause, etc., we find that this dispute is premature and moot. We do not determine if there would, or would not, be a violation if the Carrier used the purchased material; the fact remains that it did not use the wear plates. One can speculate as to the ultimate purpose of the purchase, but the mere fact of the purchase does not give rise to an actionable claim under the Agreement.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.