

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30988
Docket No. SG-30870
95-3-92-3-732

The Third Division consisted of regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation
((Conrail)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Consolidated Rail Corporation (Conrail):

- (A) Claim on behalf of J.L . Ciaccia, P. Bucci, and G. G. Ott account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized outside contracting firm Reliable Electric Co. to perform covered service of installing telephone lines and communications equipment at its Division Headquarters located at 1000 Howard Blvd., Mt. Laurel, New Jersey, on March 2 and 3, 1991.
- (B) Carrier should now make Claimants whole for the loss of work opportunity by compensating each Claimant eight (8) hours pay, at the time plus one-half rate, for each day that the violation occurred."

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 waived right of appearance at hearing thereon.

In this case the Organization claims the work of installing the telephone line and communication systems at Carrier's Mt. Laurel, New Jersey, Division Headquarters under the following express work reservation language of the Scope Rule:

" Pennsylvania Railroad, Pennsylvania Reading Sea-
shore Lines and Dayton Union Railway Company

Installation and maintenance of all telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment)."

In denying that claim, Carrier insists that utilization of the outside contractor for this particular telephone and communication system installation is expressly permitted under the following exception from Scope Rule coverage:

"EXCEPTIONS

* * *

- (c) The portion of this Scope covering telegraph and telephone work shall not apply to the work of installing or maintaining other than company owned facilities or equipment located on the property of the former Pennsylvania Railroad, Pennsylvania Reading Seashore Lines or Dayton Union Railway Company except, where employees covered by this Agreement were installing or maintaining telephone cables or line wires from the telephone company switchboard or other connection to the phone instruments in yards or terminals as of April 1, 1981, such cables or wires shall continue to be installed or maintained by such employees."

Proper disposition of this claim requires nothing more than application of the above plain and unambiguous language in the Scope Rule to the facts of record.

Throughout handling on the property, Carrier insisted that the Division Headquarters building and the telephone equipment in question were leased property, and therefore subject to the above-quoted exception. The Organization consistently disputed Carrier's assertions on the property and put Carrier to its proof on this

material fact. In the final stage of appeal on the property, Carrier provided the Organization with a "Memorandum of Lease" which read in pertinent part as follows: "All persons are hereby put on notice of the existence of the Lease. This Memorandum of Lease is not intended to and shall not be construed to modify any of the terms of the Lease."

Assuming, arguendo, that the quoted document was sufficient to establish that Carrier occupied the Division Headquarters as a Lessee, the question remains whether the telephone equipment installed by the outside contractor was leased or was the owned property of Carrier. Carrier's disingenuous attempt to pass the burden of proof over to the Organization on this critical point is not persuasive. As the party invoking an exception to plain Agreement language, the burden is upon Carrier, when challenged, to prove the conditions precedent to application of the exception. Carrier's theory that ownership of the telephone equipment and communications system is irrelevant to the exception so long as it leases the building in which that equipment is installed, is contrary to the plain language of the Agreement.

So far as the record before us shows, the telephone lines and communication equipment installed by Reliable Electric Company on March 2 and 3, 1991, were owned by Carrier. The record demonstrates a plain violation of the Scope Rule in this circumstance.

AWARD

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 July 1995.