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**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32290  
Docket No. SG-32957  
97-3-96-3-337

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

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Louisville &  
( Nashville Railroad Company)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:**

**Claim on behalf of A. W. Wallace, L. B. Kitts, and J. L. Tucker for payment of 16 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than covered employees to perform construction and installation work on equipment for a highway crossing signal system, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(95-201). General Chairman's File No. 95-SYS-102. BRS File Case No. 9730-L&N.”**

**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 claims its Scope Rule was violated when the Carrier purchased certain signal mechanisms assembled by the supplier from various components off the property and delivered to the Carrier as ready-to-install units. The Rule provides as follows:

**"RULE 1. SCOPE.**

This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the construction installation, repair, inspecting, testing and maintenance of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train controls; car retarders and car retarder systems; power operated gate mechanism; automatic or other devices used for protection of highway crossings; spring switch mechanism; electric switch targets together with wires and cables; train order signals in signaled territory and elsewhere within the limits of a signal maintainer's territory; power or other lines, with poles, fixtures, conduit systems, transformers, arresters and wires or cables pertaining to interlocking and signaling systems; interlocking and signal lighting; storage battery plants with charging outfits and switch board equipment; sub-stations, current generating and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes; carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work."

Several basic propositions warrant mention at the outset. First, there appears to be no serious dispute that Signalmen have in the past routinely assembled signal mechanisms, masts, and bells on the Carrier's property. Second, it is uncontested that in recent years Carrier and many other railroads have participated in a federally funded program to upgrade numerous signals and gates in an effort to reduce crossing accidents. In order to accommodate the resulting increased workload, a practice has

evolved by which carriers began purchasing assemblies which are delivered to them in a form substantially ready to install. Thirdly, it is undisputed that in the process of installing new signal equipment at certain crossings in Chapel Hill, Tennessee, in May 1995, Claimants, all members of System Signal Gang 7X43, were for the first time provided such signals, pre-assembled and pre-wired by the Burco Corporation of Huntington, West Virginia. And lastly, in response to claims for 16 hours pay at the straight time rate for each of the Claimants, the Carrier denied that such practice violated the Agreement because the signals in question were purchased as off-the-shelf equipment through the vendor's catalogue, although it produced neither a catalog, an order number, a list of items available from the vendor nor other evidence in reply to the Organization's requests for documentation on the point.

The Board finds no evidence of record to suggest that Carrier did not purchase prefabricated signal systems from the Burco Corporation as it contended. Accordingly, it follows that the Organization has not met its burden in establishing a violation of the Scope Rule. That conclusion is consistent with the clear preponderance of authority in the Awards of this Division over a period of many years holding that purchases from a vendor finished to specifications moots any question of "contracting out" in violation of scope provisions. Those cases address a wide variety of pre-assembled rail products, and range from contemporary decisions to Awards dating back 50 years. The precedent comprehends a number of similar or analogous Scope Rules, and numerous Carriers and Organizations, including the Parties here. When the disputed work is completed prior to the Carrier's acquiring possession, past rulings clearly hold that Scope Rule rights have not yet attached and therefore the purchase of finished products cannot be equated with the farming out of bargaining unit work. None of the cases cited to this Board appear to attempt any principled distinction between the vending of assembled components through catalog sale or by other means.

Although the reasoning of those Awards has controlling application here, the Organization's arguments with respect to the character of the Carrier's response to its claim deserve comment. It seems obvious that the Organization's demands on the property easily could have been satisfied with a documented showing by the Carrier of its decision to purchase assembled signal systems. While the Board has determined that the claim does not establish subcontracting and must be denied, it notes its concurrence with the Organization's observations that offhanded case handling inevitably defeats the spirit of the Agreement and affects the broader interests of the parties in ways at least as unwholesome as violations of it.

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**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 13th day of November 1997.