

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 34081  
Docket No. SG-34456  
00-3-98-3-82**

**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:** (

**(CSX Transportation, Inc. (former Chesapeake and Ohio  
( Railway Company - Pere Marquette)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad  
Signalmen on the CSX Transportation Company (C&O-PM):**

**Claim on behalf of E. Taber Jr., D. G. Lasich, and F. C. Pearson for  
payment of a total of 6.5 hours at the time and one-half rate, account  
Carrier violated the current Signalmen’s Agreement, particularly the  
Scope Rule, when it used a contractor to install computer software at  
Wyoming Yard on November 26 and December 5, 1996, and deprived the  
Claimants of the opportunity to perform this work. Carrier’s File No.  
15(97-60). General Chairman’s File No. 97-40-PM. BRS File Case No.  
10451-C&O-PM.”**

**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 asserts that on two different dates employees of an outside contractor came onto the Carrier's property and installed computer software programs. Sarcom employees spent four and one-half hours on November 26 and then returned again on December 5, 1996, putting in an additional two hours loading and installing software on the Training Pod Computers at Wyoming Yard, Grand Rapids, Michigan. The Organization submitted and pursued this claim alleging that such work was covered by the Scope of the Agreement and therefore Scope protected. The Organization alleged that the Claimants' positions had "always been assigned the work of installing computer software as part of their regular assignments. . . ."**

**The Carrier denied that the work at issue was Scope protected. While the Carrier stated that the employees have installed and maintained connectivity for the Training Pod Computers, it denied that the installation of software was Scope protected. The Carrier maintained that the work performed by the outside contractor was work that was not Agreement protected.**

**The Board carefully read the Scope Rule and studied the record. As in all disputes, the moving party has an obligation not only to establish a *prima facie* case, but also to support it with relevant probative evidence. Following the initial claim letter of January 6, 1997 alleging that the work was Scope protected and that the employees had performed such work as a normal part of their responsibilities, the Carrier maintained that "loading of software is not reserved exclusively for any particular craft." The Scope Rule refers to "the installation and maintenance of communication facilities or equipment. . . ." It contains no reference to installing software, the work herein disputed. After the Carrier denied the claim, the Organization presented no evidence to further support its burden. There is not one letter in this record from an employee stating that only BRS represented employees have installed software programming on computers at Wyoming Yard.**

**Finding no proof of past performance, reservation, or contractual inclusion, the Organization's burden of proof has not been met. The Board must therefore deny the claim.**

**AWARD**

**Claim denied.**

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**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 25th day of May, 2000.**