

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36240
Docket No. SG-35364
02-3-99-3-239

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

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

STATEMENT OF CLAIM:

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

Claim on behalf of F. W. Gailey, for payment of six hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used an outside contractor to repair a DETCF Console on October 5 and 6, 1997, and denied the Claimant the opportunity to perform this work. Carrier’s File No. SG-1001. General Chairman’s File No. RM3121-28-0298. BRS File Case No. 10934-CR.”

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 instant dispute arose when outside contractor forces performed repair work on a printer associated with a computer located in the Carrier’s Computer Assisted Train Dispatching Facility in Dearborn, Michigan. The record of handling developed on the property, however, does not prove the violation of the Agreement alleged in the claim.

The initial claim alleged an Agreement violation generally without citing any specific Rule. In reply, the Carrier asserted that the services performed by the contractor were “. . . not covered within the Scope . . .” of the Agreement. This assertion was never refuted on the property. After conference, the Carrier wrote, in pertinent part, as follows:

“The DETCF machine and printer are backup equipment for the train dispatcher monitors. It does not interface with the signal or code systems whatsoever and is not scope covered work. This equipment has never been

maintained by BRS employees and the claimant has no demand right to the overtime call.

* * *

... historically this equipment has been installed and maintained by Decision One and is not a duty which has ever been performed by our employees.”

These assertions were, likewise, never refuted. In its final correspondence on the property, the Organization misquoted the classification language pertaining to the Electronic Specialist position. In reality, the classification language makes no reference to the maintenance of electronic equipment associated with the dispatching of trains at dispatching centers. Instead, the classification language says this in pertinent part:

“... repair ... of all electronic equipment ... associated with automatic classification of cars...”

Our review of the Scope Rule reveals a lengthy listing of signal equipment and control systems referenced by the parties. However, nowhere does the list mention DETCF equipment.

In the absence of language that explicitly reserves work, as is the case here, it is well settled that scope coverage must be established by evidence demonstrating regular and customary performance of the disputed work on a historical basis. The record herein contains no such evidence.

Given the state of the record, we must find that the Organization’s burden of proof has not been satisfied. The claim, therefore, must be denied.

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 24th day of September 2002.