

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36765
Docket No. SG-36460
03-3-00-3-723

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of L. E. Reitz, C. W. Lynch, B. A. Brinker, S. L. Johnson, A. H. Jett, and K. J. Svejksky for payment of two hundred and forty (240) hours each at their respective straight time rates and one hundred seventy-three (173) hours each at their respective time and one-half rates. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used an outside contractor to repair and assemble the components of the car retarders and to repair and install seventy-two cylinders (72) used at the Retarder Yard in North Platte, NE and deprived the Claimants of the opportunities to perform this work. General Chairman’s File No. Nscope-004. BRS File Case No. 11434-UP.”

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 dispute in this case arises as a result of the Organization's allegation that the Carrier's receipt and installation of pre-assembled car retarders violated the Scope Rule. The Organization argued that the Claimants were entitled to repair and assemble the specific components which are used to replace worn car retarders. The Carrier responded that for many years complete master retarder systems have been purchased as a finished product from retarder vendors. The Carrier further stated that the retarders in dispute were installed by the Claimants.

The Organization has not carried its burden.

The Carrier has the right to purchase finished products. In Third Division Award 36320 between the parties involving switch machines sent by the Carrier to a manufacturer for rebuilding the Board held:

"... Realistically viewed, therefore, the carrier was buying what was in effect a new product. The fact that the seller assembled and tested the new product before returning it to the Carrier in no way diminishes the fact that this was a purchase of equipment. This kind of purchase had occurred often in the past, frequently without any protest from the Organization. And past Awards have held that such purchases are outside the reach of the Scope Rule. The Organization's claim is without merit."

See also, Third Division Award 21232 involving the purchase of retarders:

"This dispute does not deal with work performed on the property. Rather, it deals with an item made at a factory. Such off-property work is not contemplated by the Agreement."

Further, see Third Division Award 23020 also involving the purchase of retarders:

“... [T]he purchasing of a finished product ... cannot be viewed as the contracting out or the farming out of bargaining unit work. This Board has consistently held that Carrier may purchase assembled equipment without violating the Scope Rule. ...”

Public Law Board No. 4716, Award 113 does not support the Organization's position but instead supports the Carrier. That case held that the remanufacture of only the retarder cylinder was scope covered as “[maintenance] and/or repair” of ‘car retarder systems’ and that “repair of the retarder cylinders as discrete units is properly work of Signalmen, reserved to them by the provisions of the Scope Rule.” That is not this case. As shown by the Carrier's letter of February 24, 2000 and the attached statements of Manager Signal Maintenance R. J. Moritz, this case involves the purchase of entire retarder assemblies which included cylinders and all other components of the retarder systems and which, in the past, the Carrier has purchased as a finished product from retarder vendors. In pertinent part, while holding that maintenance and repair of cylinders is scope covered, Award 113 further stated that the type of work involved in this case is not scope covered:

“... [T]he Parties agree that when the ‘remanufacture’ of retarder systems of those cylinders is included as an ineluctable part of repairing the entire retarder lever assembly repair (including cylinders, retarder thrust blocks, retarder brake beams, intermediate retarder chairs, and the retarder rerailers, the work was sent to an outside contractor and returned “in tact” to Organization employees for reinstallation.”

The record establishes that the Carrier purchased entire car retarder systems from a manufacturer. The Carrier has that right.

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 29th day of December 2003.