

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36881
Docket No. SG-36193
04-3-00-3-390**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 on the Consolidated Rail Corporation (Conrail):

Continuing claim on behalf of G. G. Ott, J. L. Ciaccia, and D. J. Gibbs for payment of eight (8) hours each at the straight time rate, per day, commencing on January 29, 1999 and continuing until the work is reverted back to Claimants. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when beginning on January 29, 1999 it permitted forces not covered under the Conrail's Signalmen's Agreement to perform covered work at the Howard Boulevard office building. Carrier File No. 039146. General Chairman's File No. JY3268-58-0699. BRS File Case No. 11150-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.

This undated claim protests the Carrier's use of an outside contractor beginning on January 29, 1999, to install and maintain new telephones and communication circuits for the Norfolk Southern Railway (NS) applications and training center located at the Mt. Laurel office building at 1000 Howard Blvd. in Mt. Laurel, New Jersey, where the Carrier also maintained its Philadelphia division headquarters. The Carrier's May 17, 1999 denial notes that NS contracted the work for its own benefit and that the Mt. Laurel office building was not owned by the Carrier. A June 18, 1999 appeal led to a July 13, 1999 conference, resulting in a decision of the Senior Director of Labor Relations dated September 9, 1999 to deny the claim. The Organization rejected this decision by letter dated September 27, 1999, asserting that the Carrier violated the Scope Rule because the Mt. Laurel building is a Conrail facility and that the matter was governed by Third Division Award 30988. The Notice of Intent herein, dated June 8, 2000, was filed by the Organization and received by the Board the following day.

The Organization argues that Third Division Award 30988, between the same parties concerning the same issue, is determinative, and found that a violation of the Scope Rule occurred by the Carrier contracting out the installation of telephone lines and communications equipment which were owned by the Carrier regardless of whether it occupied the Mt. Laurel facility as a Lessee. The Organization asserts that the Carrier had control over both the premises where the installation took place and the equipment, and contends that the Claimants were qualified to perform this type of work which is covered specifically by the Scope Rule and had done so at 24 other Conrail and outside vendor facilities.

The Carrier initially argues that the Board lacks jurisdiction to entertain this claim because the Organization failed to file it in a timely fashion as required by Rule 4-K-1(c) citing Third Division Awards 28880, 29354, 33897, 35965 and 35966. With respect to the merits, the Carrier notes that Third Division Award 30988 is distinguishable because the action herein is by a third party for its own benefit, and that the Carrier neither participated, benefited from nor owned the equipment in issue, which was installed for the sole purpose of linking payroll data to the NS Payroll System. The Carrier contends that the Scope Rule is not applicable at leased facilities and does not govern work performed for NS over which the Carrier has no control, citing Third Division Awards 28739 and 29070.

Initially we note that the Carrier has not shown that this case was untimely filed with the Board. A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that there was a violation of the Scope Rule in this case. Throughout the handling on the property, the Carrier continually asserted that it neither owned the premises nor the equipment being installed solely for the benefit of NS, and had no control over the subcontracting being protested herein. The Organization relied upon the holding in Third Division Award 30988 that the fact that the premises is being occupied by the Carrier as a Lessee, not owner, does not change the applicability of the Scope provision when it comes to telephone installation work. We find this case distinguishable from Third Division Award 30988 in that the Carrier therein invoked the exception to the plain language of the Scope Rule, yet failed to present any proof that the equipment was not owned by the Carrier or installed for its benefit. Both assertions were contested by the Organization on the property. In that case the Carrier relied totally on its Lessee status. In this case, the burden was on the Organization to show that the Carrier had control over both the equipment being installed as well as the premises into which it was placed. The record does not support a finding that it met such burden. Accordingly, the claim 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 25th day of February 2004.