

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37221
Docket No. MW-36385
04-3-00-3-626**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Utica Signal Maintenance Company) to perform Maintenance of Way work in connection with the installation of crossbucks at crossings in the vicinity of the Delta Yard in the Delray area of Southwest Detroit, Michigan on November 30, December 1 and 2, 1998 instead of B&B Foreman J. H. Roberts and B&B Mechanic D. T. Sissen (Carrier's File MW-5489).**
- (2) The Carrier further violated the Agreement when it failed to furnish the General Chairman with a proper notice of its intent to contract out said work and discuss the matter in good faith as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. H. Roberts and D. T. Sissen shall now be compensated for twenty-four (24) hours' pay at their respective straight time rates of pay.”**

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 core issue in this dispute is whether the crossbucks in question were installed on Carrier property or property owned by the City of Detroit.

The Organization contends that the work was done on Carrier property, thus requiring the Carrier to provide notice and to comply with the Scope Rule. It submitted seven photographs into the record purportedly showing that the crossbucks were, in fact, installed on Carrier property.

The Carrier, to the contrary, repeatedly asserted that it had not contracted for the work and that the work was not performed on its property. It contended that the property was owned by the City of Detroit. The Carrier also introduced pertinent text of Michigan laws, Section 311(1) that places responsibility for the installation of passive traffic control devices upon the state Department of Transportation.

The Organization, in turn, noted that the same statute, in Section 315(4) required the railroad to do the work when "standard active railroad-highway traffic control devices" are installed.

Our review of the record does not show the claim to have merit. The work involved was the installation of crossbucks by themselves. They were not part of a system with flashing lights and moving gates. As such, they are passive devices governed by Section 311(1) and not "standard active railroad-highway traffic control devices" within the meaning of Section 315(4). Thus, under the statute, the installation work was the responsibility of the state road authority and not the Carrier.

While the photographs in the record do show the individual crossbucks, they do not show the location of property lines. At best, they show the signs were installed near Carrier property. In this regard, we note the following text from the original Claim:

“The crossbucks were installed in the Delray area of southwest Detroit, at various industrial track crossings. This area is southeast of Delta Yard where there are several businesses such as Wayne Soap Company, a City of Detroit water treatment facility, a large paper company (formerly Scott Paper), etc.”

In claims of this kind, it is the Organization's sole burden of proof to establish that the work was done on Carrier property for the Carrier's benefit. Both public and private property was in close proximity to the Carrier's property. If the work was not performed on the Carrier's property, as the Carrier asserts, it was not obligated in any respect under the Scope Rule. Accordingly, no notice to the General Chairman was required. On this record, the Organization has not satisfied its burden of proof. The evidence does not establish that the work was done on Carrier property. Thus, no violation of the Agreement has been proven.

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 28th day of September 2004.