

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37710  
Docket No. SG-37606  
06-3-02-3-734**

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

**PARTIES TO DISPUTE:** ( **(Brotherhood of Railroad Signalmen  
(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (KCS):**

**Claim on behalf of C. E. Frank, for eight hours at his straight time rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 1, the Scope Rule, when it allowed outside contractors to install Scope covered signal equipment in connection with the CTC system at the control point at South Fisher, Louisiana, and deprived the Claimant of the opportunity to perform this work, the Organization's first knowledge of this installation was October 1, 2001. Carrier's File No. K06025553. General Chairman's File No. 01-112-KCS-185. BRS File Case No. 12254-KCS."**

**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 on-property record indicates that the Organization became aware on October 1, 2001 that the Carrier had an outside contractor, Comet Industries, install the radio link communication system at South Fisher, Louisiana. By letter of October 11, 2001, the Organization alleged violation of the Scope Rule of the Agreement, which reads, in pertinent part, as follows:

**“This Agreement governs . . . the work generally recognized as signal work; which work shall include the construction, installation, maintenance, and repair of all signal equipment, . . . centralized traffic control systems, electric switch heaters, detector equipment connected to or through signal systems, including all their apparatus and appurtenances, . . . and all other work generally recognized as signal work; . . .**

**Employees covered by this agreement will be assigned the work and installation, testing, and inspecting of all equipment, including technological changes in Carrier’s signal system. Carrier will provide the necessary training for the employees assigned to such work.” (Emphasis added)**

The Organization’s claim is that the Carrier permitted outsiders to install “radio link communication systems” which under the Scope Rule is a clear technological change in the signal system. The basic argument of the Organization is that the K2 communications is radio equipment that transmits and receives signal system information and replaces older wire based CTC equipment. As such, its present function is the transmission of signals, work protected by the Agreement.

The Carrier asserted that the work of Comet Industries was the work it had done for years; communications work, not signal work. The Carrier argued that the K2 communication installation was neither Signalmen’s work, nor a technological change. In fact, it was not a part of the signal system, but a change to the communication network. Because this K2 communication network and equipment was not a part of the Signalmen’s Agreement, it was not a violation of the Scope Rule of the Agreement.

The Scope Rule certainly covers any recognized signal work, installation or equipment involved in recognized signal work and “technological changes in Carrier’s signal system.” The Organization has the burden of proof to establish that the “radio link communications system” installed by Comet Industries was Signalmen’s work or a technological change to the signal system. As a preliminary point, much of this record involves material asserted after the Notice of Intent to submit this dispute was filed with the Board. That new material has therefore been disregarded because the Board may only consider issues raised and considered while the dispute was on the property and before filing.

To prevail, the Organization must demonstrate with probative evidence the exact nature of the work, its inclusion in the Scope, and that its performance by outsiders was thereby a violation of the Agreement. The Board carefully studied the Organization’s assertions of the work performed; installed radio link communication systems. The argument is two fold: that this radio link’s sole purpose is to operate the Carrier’s signal system and that arguments about what it might do are irrelevant to what it actually does. As stated by the Organization:

“The only function of the installed equipment at this location has been to transmit and receive CTC signal codes between the signal control point at Fisher, LA, and Carrier’s microwave system. The sole purpose of this equipment is to transmit and receive information used to operate the Carrier’s signal system. This new equipment simply replaced the older wire-based CTC equipment and accomplishes the same function by means of a different technology.”

Standing alone, this establishes a prima facie case which the Carrier must now effectively rebut.

The central points of the Carrier’s on-property rebuttal come in its letters of December 12, 2001 and February 27, 2002. In the former, Signal Engineer Jones denies the installation was signal equipment covered by the scope of the Agreement. He maintains that it was not a technological change to the signal system, but, rather, a “technological change to the Carrier’s communication network.” As for the sole purpose, Signal Engineer Jones agrees that it is “paired unit system radio link technology” and that at South Fisher, the Vital Harmon Logic Controller, a piece of signal equipment, passes its information through many different types of

communication equipment, including the K2 Coding System. However, the K2 system and equipment in the claim "has never been installed or maintained by employees covered under the Signalmen's Agreement." Notably absent is a denial that the "sole purpose" of the work performed was to "transmit and receive information used to operate the Carrier's signal system."

As for the Carrier's rebuttal letter of February 27, 2002, the major point was stated as:

"This dispute involves the installation of a radio at South Fisher, LA. This radio provides a communication link to Shreveport. Radios, which include the transmission of data and voice signals, are part of the Carrier's Communication Network. Communication work does not fall under the scope of the KCS/BRS Collective Bargaining Agreement. The Brotherhood of Railroad Signalmen are well aware of the contract KCS has with Comet Industries to perform all communications work on the KCS. This contract goes back approximately 25 years."

The Carrier's denials are clear and it maintains that this is not a technological change to the signal system and has for 25 years been performed by these same outside contractors. The Board notes again, that absent from this denial is that the contractor's work in this instance had only one purpose, "signal use."

The Board carefully studied those rebuttals. Nowhere does the Carrier ever deny that the sole purpose of the system is for signal work. The Organization raised Third Division Award 35008 on the property, which the Carrier stated was different because the:

"... communication pipe ... will be used to communicate non-vital information from non-signal equipment. One example will be the ability to transmit Automated Equipment Identifier (AEI) information. The pipe will also transmit high water and slide fence indication and gas pressure information to the System Transportation Center."

Nowhere on the property does the Carrier state that it currently does any of the above. The Organization directly challenged the Carrier which offered no rebuttal. The Organization stated that:

“... the only purpose of the equipment mentioned in the claim was for signal use. It is performing no other function at the current time, and what its potential use may be makes no difference.”

The Board finds Third Division Award 35008 on point with this dispute. Given the evidence in this record, we must find that this work belongs to Signalmen because it is only installed for signal use and it remains so, until that use has changed. As it stands, the claim must be sustained.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of January 2006.