

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37868
Docket No. SG-38049
06-3-03-3-466

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

STATEMENT OF CLAIM:

- "1. Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP).
2. Claim on behalf of L. E. Reitz, C. W. Lynch, C. P. Frederick, S. L. Johnson, K. J. Svejksky, C. C. Gracey, D. O. Fauss and B. J. Keith, for payment of 120 hours each at their respective overtime rate of pay for assembling the components for the electro-pneumatic car retarders, and for 106 hours each at their respective overtime rate of pay for the work associated with the repair of the 34 cylinders on the electro-pneumatic car retarders, account, Carrier violated the current Signalmen's Agreement, particularly the SCOPE Rule, and Rule 80, when on July 10, 2002, Carrier installed a preassembled electro-pneumatic car retarder at the North Platte, Nebraska, Westbound classification yard. Carrier used a third party contractor to repair and assemble the 34 cylinders on the car retarder and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1339800. General Chairman's File No. Nscope 296. BRS File Case No. 12736-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.

This case is similar to other cases submitted to the Board. It involves the Carrier's purchase of pre-assembled electro-pneumatic car retarders directly from the manufacturer. The Claimants installed the equipment.

The Organization claims a violation of the Scope Rule. The Carrier denies the violation and cites Third Division Award 23020 which held:

"The Organization's claim rests primarily on the Scope Rule. It asserts that construction of car retarders falls within the work rule. The Organization also argues that signal employees had performed the disputed work since car retarders were installed on Carrier's property in the 1920's.

On April 19th, 1978, Carrier received a preassembled car retarder section from the Lucey Boiler Company of Chattanooga, Tennessee.

The evidence on the property as well as submissions to this Board clearly established that Carrier purchased the end product of the Lucey Boiler Company. The disputed work was completed prior to the time that Carrier acquired possession of the equipment. That is, there is nothing to indicate that this did not constitute a purchase.

This is not the situation where the unassembled equipment was on the property and then went out for assembling. If that was the case, the rights of the employees under the Scope Rule would attach. Here these rights have not yet attached. In short, the purchasing of a finished product, in the circumstances presented here, 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. See for example Awards 5044, 21824. Those cases are applicable here. Therefore, we will deny the claim."

The facts are similar in the present case. The Organization has not met its burden of proving that the Agreement was violated.

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 1st day of August 2006.