

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30921
Docket No. SG-31037
95-3-92-3-731

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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 (BRS) on the Consolidated Rail Corporation (CONRAIL):

- (A) Claim on behalf of L. A. Bradley, et al., account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized outside contractors to perform covered service of installing batteries and power connections for a back up power supply for the Signal Computer System at Mr. Laurel, New Jersey, on February 1, 1991.
- (B) Carrier should make Claimants whole for the loss of work opportunity by compensating each Claimant eight (8) hours pay at the pro-rata rate. (Carrier File SG-378. GC File No. RM2192-58-1091. BRS File No. 8711-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 waived right of appearance at hearing thereon.

Between August 29, 1990, and March 15, 1991, the Carrier engaged the services of the R. Edwards Construction Company to

construct a Computer Assisted Train Dispatching Facility (CATDF) at its Philadelphia Division Headquarters in Mt. Laurel, New Jersey. As part of this project, the contractor installed a battery rack and power connections for an uninterrupted power supply, which is a backup power source for the CATDF. According to the Carrier, this portion of the work took less than one day.

The Organization asserts the Scope Rule reserves this work to employees covered by the Agreement. That Rule reads, in part, as follows:

"These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work.

* * *

Signal batteries.

* * * "

The Carrier's first defense is that the work is not covered by the Agreement because the facility at which the work was performed is not owned by the Carrier, but is leased. The Carrier submits the Agreement has application only on the Carrier's property, which was the intended meaning of the phrase "... in the signal shop or in the field." The Board fails to find such a limitation in the Agreement. Ownership of the property is not as significant as control. It is evident the Carrier had sufficient control over the property that it was able to designate what work was to be performed, by whom, and in what manner.

The Carrier's next defense is that it has established a past practice of contracting this work. It asserts the same work was performed by contractors at five other facilities where CATDF was installed before Mt. Laurel. According to the Carrier, the Organization neither filed claims nor protested the use of contractors at these other locations.

When work is given to a craft by a clear and unambiguous Scope Rule, the fact that the Carrier may have used others to perform the work is not sufficient to override the Rule. The Rule covers the work of installing "... signal equipment and control systems, including ... power supplies ... used in connection with the systems." Although the batteries were backup power, they are still considered a power supply. It is, therefore, a violation of the Agreement to have persons not covered by the Agreement perform the work.

There is, however, no showing that the Claimants lost either work or compensation as a result of the violation. Following Third Division Awards 26481 and 28889, as well as numerous others, a monetary award will not be granted.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

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 8th day of June 1995.