

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31247
Docket No. SG-31350
95-3-93-3-343

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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):

Claim on behalf of C.L. Six, Jr., for payment of four hours per week at the straight time rate of pay, beginning June 1, 1990, account Carrier Violated the Current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than signal employees to perform the covered work of testing and maintaining a backup battery system at Harrisburg, Pennsylvania, and deprived the Claimant of the opportunity to perform this work."

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.

On or about June 1, 1990, Carrier moved its Harrisburg Division Headquarters from a location at "Corporate Circle" to leased premises on "Interstate Drive". According to the Claim, the Uninterruptable Power Supply (UPS) was inspected and maintained weekly by Claimant at the Corporate Circle location. The UPS is a bank of storage batteries and associated electronic circuitry that takes over and continues to supply power to the computers and other signal control equipment at the headquarters in the event of a power failure. Following the move to Interstate Drive, Claimant no longer had access to the UPS nor was he called upon to inspect and maintain the backup power supply. It is alleged that a contractor now performs the work in violation of the Scope Rule.

In addition to discussing the merits of the Claim, the parties cross-alleged that the other had failed to comply with the Rule 4-k-1(a) procedural requirements of the Agreement. These allegations have been determined to be unwarranted and are, therefore, rejected.

Carrier denies a violation of the Scope Rule because the UPS is located on leased premises. It argues that non-ownership of the premises takes the work out of the purview of the Scope Rule. This same contention was raised on virtually identical facts between these parties in Third Division Awards 30921 and 30922. The Board there rejected the Carrier's contention. The Board found no limitation on Scope coverage based on ownership versus leased control of premises. It found that Carrier had sufficient control over the premises that it was able to designate what work was to be performed, by whom, and in what manner. We agree with that rationale. Carrier failed to establish any limitation on its right of control over the use and maintenance of the leased premises at Interstate Drive. Moreover, on the property, the Organization asserted, without Carrier opposition, that the former Division Headquarters at Corporate Circle was also leased premises. On this record, therefore, we find that the disputed work was Scope covered and, as such, Carrier was not able to validly contract out the performance of the work to non-covered personnel by lease or other contractual means. Accordingly, to the extent the work is performed by non-covered personnel, it constitutes a violation of the Agreement.

Carrier also contends the Claim is excessive. It argues that there is no proof of actual performance of the disputed work. In addition, it asserted on the property, without challenge by the Organization, that the UPS requires an integrity check only every 6 months. Our review of the record fails to reveal any proof of actual performance of the work by outsiders or proof of loss by Claimant. Such is necessary to establish entitlement to a remedy.

As a result, we must deny the portion of the Claim that seeks a monetary award.

AWARD

Claim sustained in accordance with the Findings.

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 1st day of November 1995.