

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32057
Docket No. SG-32191
97-3-94-3-630**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The 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 Railway Corporation (KCS):

Claim on behalf of A.L. Orendorff, C.D. Francis, M.L. Loyd, and C.J. Russell Jr. for payment of 10 hours each at their respective straight time rates, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a contractor to perform the covered work of installing signal equipment for use in the grade crossing signal system at mile post 808.97 and denied the Claimants the opportunity to perform this work. Carrier's File No. 013.31-472. General Chairman's File No. 01-1171. BRS File Case No. 9559-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 Claimants in this case were members of a Signal Gang headquartered at Shreveport, Louisiana. The claim on their behalf alleges that Carrier violated the negotiated Scope Rule when it purchased from a private vendor a pre-wired signal bungalow and had it installed on Carrier's property in the territory of the Claimants.

The language of the Scope Rule here in dispute is as follows:

"RULE 1

SCOPE

This agreement governs the hours of service, rates of pay, and working conditions of all employees in the Signal Department below the grade of Supervisor (except clerical and engineering forces) performing the work generally recognized as signal work; which work shall include the construction, installation, maintenance, and repair of all signal equipment, such as signals (automatic or otherwise), interlocking plants, highway crossing protection devices, wayside train stop and control equipment, car retarder systems, centralized traffic control systems, electric switch heaters, detector equipment connected to or through signal systems, including all their apparatus and appurtenances, signal shop work and all other work generally recognized as signal work; and it shall include the installation and replacement of solar power systems.

Work shall also include the installation, maintenance and repair of hot box, dragging equipment, high wide, slide and other wayside detector systems, and their appurtenances and appliances, the function of which is to inspect passing trains for defects.

NOTE: The Carrier may, until January 1, 1993, utilize forces not covered under the terms of this agreement to assist the employees in upgrading and maintenance of the aforementioned detector systems. During this period work done by outside forces to assist the employees with the detector systems shall not be subject to dispute under the provisions of Rule 48.

Employees covered by this agreement will install and maintain all circuit boards including future replacements which contain solid state design consisting of components technologically equivalent and similar in concept and design to those which are currently an integral part of the Carrier's signal systems.

Employees covered by this agreement will be assigned the work of installation, testing, and inspecting of all equipment, including technological change in Carrier's signal systems. Carrier will provide necessary training for the employees assigned to such work.

NOTE: Employees assigned to positions described in the Classification Rule of the Agreement will be trained and assigned, subject to qualification rules in the Agreement, to install, maintain and/or repair the systems and devices, including their appurtenances and appliances, set forth in the Scope Rule."

During the handling of the case on the property, the Organization initially alleged that the pre-wired bungalow was, in fact, installed on Carrier's property by employees of the vendor. Carrier's initial response to the Organization's claim alluded to the fact that the employees of the vendor were represented by the same labor organization which represents Carrier's Signal employees. Carrier later asserted on the property that the actual installation of the pre-wired equipment on Carrier's property was, in fact, performed by the Signal Gang. This initial disparity of material fact was subsequently laid to rest when the Organization representative acknowledged that "relays were in packing boxes and were installed onto relay racks by signal forces...." The continuing assertion by the Organization concerned itself with the pre-wiring of the signal bungalow by the vendor's employees on the vendor's property. This pre-wiring work by the vendor, the Organization says, was not for an off-the-shelf item, but rather was for a special order item made to Carrier's particular specifications for installation at a particular location on Carrier's property. Therefore, they say, such pre-wiring should have been performed by Carrier's employees on Carrier's property. The Organization cited Third Division Awards 30108 and 26452 in support of their position. The Organization alleged that Signal Department employees have, in the past, constructed similar signal devices on the property and could have done so in this instance.

The Carrier's position is basically threefold. It contends that the purchase of pre-wired signal bungalows is not precluded by the negotiated Scope Rule, that such purchases have been made on numerous occasions in the past, and that the actual necessary installation of the equipment on Carrier's property was performed by its Signal Department employees. Fortunately for Carrier, it abandoned its initial ill-conceived position relative to the union representation of the vendor's employees which had absolutely nothing to do with this dispute.

From the Board's review of the citations of authority advanced by the Organization, we do not find either of the cited Awards to be of any assistance in this situation. In the first case, an outside contractor actually worked on Carrier's property to bore a hole and install a pipe to carry a signal cable which work was properly held to accrue to Signalmen. The other case involved a dispute between two different Organizations over the performance of alleged work items on Carrier's property. Neither of these situations is determinative in the instant dispute.

Here the Organization contends that none but Carrier's Signal employees may be used to wire signal bungalows regardless of where such wiring work is performed. The Board cannot extend the rights of the negotiated Scope Rule beyond the boundaries of Carrier's territory. The Board does not find any prohibition in the Scope Rule against Carrier purchasing pre-wired signal bungalows from private vendors. The Board does agree that the installation of the pre-wired signal equipment after it arrives on Carrier's property accrues to Signal Department employees. The fact that the pre-wired equipment is site specific does not negate Carrier's right to purchase the equipment from a private vendor.

This conclusion finds support in the decision reached by Third Division Award 5044 which held:

"We fail to see, however, that a purchase of new equipment in whatever form it may exist, can constitute a farming out of work under the Agreement for the fundamental reasons that it never had been under the Agreement. That which was never within the scope of an agreement cannot be farmed out.

This construction of the rule is consistent with past practice on this Carrier. The record disclosed a number of instances where factory

equipped instrument cases have been purchased without complaint on the part of the Organization. It is a clear indication that the Organization itself did not construe the Agreement to include the assembling and wiring of instrument cases by a manufacturer as the work of signalmen.

* * *

The contentions advanced by the Organization amount to an encroachment upon the prerogatives of management in one of its most important functions. Management should not be limited in its managerial prerogatives by placing a strained construction upon a rule that was never mutually intended by the parties. Such limitations upon the primary functions of management can be obtained only by negotiation, a function in which this Board can take no part."

One of the more recent decisions in this same regard is found in Public Law Board No. 5616, Award 18 which ruled:

"In the final analysis, what the Organization is contending is that Carrier is in violation of the Scope Rule of the Agreement when it purchased pre-wired bungalows from an outside vendor and installed them on Company property. That argument is not persuasive. While the Signalmen clearly, by Agreement, have all of the rights proposed by the Organization, once equipment or supplies reach the property, the Scope Rule cannot be extended to restrict Carrier's right to purchase equipment from outside companies.

This issue has arisen many times on the past on this Railroad, as well as on many others. Innumerable arbitration awards on the subject have been rendered. The more reasoned of those awards concludes that Carriers do have the right to purchase pre-wired signal devices from outside vendors. If the parties had agreed at any time in the past that the purchase of pre-wired signal equipment was a violation of the Scope Rule, their understanding could have easily been so stated in the Agreement. The fact that it is not so stated leads one to the conclusion that the parties never intended that the Scope Rule would be extended to mean pre-wired equipment could not be purchased."

On the basis of the totality of precedent on this subject, the instant claim is denied for absence of rule support.

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 10th day of June 1997.