

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32463
Docket No. SG-33295
98-3-96-3-819**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):

Claim on behalf of D. E. Malone, D. L. Alexander, S. W. Boone, E. M. Leeson, R. D. Koker, B. F. Royer and B. J. Rickords for payment of 91.5 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than covered employees to construct car retarders for the Galesburg, Illinois, Classification Yards, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. SIA 95-11-16AA. General Chairman's File No. C-43-95. BRS File Case No. 10054-BN.”

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 Organization alleged that the Carrier violated the Scope of the Agreement by accepting a retarder built by AAA Retarder Sales. It argues that AAA Retarder Sales constructed the retarder for Galesburg from blue prints supplied by the Carrier's Signal Supervisor. The Organization maintains that the Carrier purchased materials from Union Switch and Signal and then permitted AAA Retarder Sales to construct the car retarder system for the Galesburg Hump Yard. In support of this claim, the Organization cited sustaining Public Law Board No. 5616, Award 9 over "very similar, if not precisely the same" issue disputed here.

The Carrier denied all aspects of the Organization's claim. The Carrier argued that it did not contract with AAA Retarder Sales to build the retarder for Galesburg, Illinois. It asserted that it purchased the retarder from Union Switch and Signal and that any work performed by AAA Retarder Sales from blueprints or materials were supplied to AAA Retarder Sales by Union Switch and Signal and not the Carrier. It denies any applicability of Public Law Board No. 5616, Award 9 as involving very different circumstances. The Carrier maintains that it has purchased and installed retarders in this same manner without prior objection. The Carrier denies any Scope Rule violation.

The on property record of this dispute supports the Carrier for the following reasons. The Organization has submitted no proof that the Carrier contracted with AAA Retarder Sales for the construction of the car retarder system for the Galesburg Hump Yard or supplied either supplies or blueprints as part of such contract. On the contrary, the Carrier denied any contract existed and thereafter there was no further rebuttal from the Organization. Additional probative evidence supplied by the Carrier, including the September 16, 1994 price quotation and the letter from Union Switch and Signal, confirm that the contract was directly with Union Switch and Signal. The on property record supports the Carrier's assertion that it was Union Switch and Signal that had a contract with AAA Retarder Sales and not the Carrier.

The Board has further studied Public Law Board No. 5616, Award 9. Although a brief Award, the violation of the Scope Rule sustained therein was premised upon the car retarders coming "into the possession" of the Carrier and then the Carrier utilized a contractor to "recondition" and "reinstall" those retarders. That is not the circumstances at bar. The Board finds no evidence that once the car retarders came into the possession of the Carrier that a contractor either reconditioned or reinstalled them. The dispute at bar was with the purchase of a system which was installed at

Galesburg Yard by Signalmen. Based upon this full record, the Organization has failed to prove a Scope Rule violation. The claim must be denied.

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 21st day of January 1998.