

****CORRECTED****

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37606
Docket No. SG-37580
05-3-02-3-707**

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

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**Union Pacific Railroad Company**)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP).

Claim on behalf of C. W. Lynch, J. L. Peterson, H. J. Hunt, D. D. Fauss, S. L. Johnson, A. J. Jett, K. J. Svejkovsky and L. E. Reitz, for 238 hours each at their respective time and one-half rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 80, when it purchased and installed a pre-assembled car retarder at the North Platte Hump Yard on August 8, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 1287009. General Chairman’s File No. Nscope-226. BRS File Case No. 12272-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.

At the time of this dispute the Claimants held various positions at the Hump Yard at North Platte, Nebraska.

On August 8, 2001 the Carrier received a new fully assembled car retarder which was installed by the Carrier's employees.

On September 24, 2001 the Organization instituted this claim on the basis that the Scope Rule was violated when the outside contractor made and assembled the car retarder.

The Carrier argues that the Scope Rule does not prohibit the purchase of a new and fully assembled car retarder. In support of its position the Carrier cited 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 employes 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 establishes 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 employes 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 22nd day of September 2005.