

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37905
Docket No. SG-38183
06-3-04-3-95**

The Third Division consisted of the regular members and in addition Referee James E. Mason 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 Railroad:

Claim on behalf of C. P. Frederick and S. L. Johnson, for 24 hours each at their respective overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly the SCOPE, when on November 13, 2002, it installed four pneumatic car retarder cylinders that had been repaired and assembled by a third party contractor. The location of the work was on the 41-50 group electro-pneumatic car retarder at the North Platte, NE Eastbound classification yard. The Organization also claims that the kind of work the contractor performed has been performed by the Claimants on a regular basis. Carrier’s actions deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 1353280. General Chairman’s File No. Nscope 303. BRS File Case No. 12874-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.

The Claimants in this case were regularly assigned as Interlocking Repairman and Signaller respectively at North Platte, Nebraska. The penalty claim initiated on their behalf by the Organization contended that the Carrier violated the Scope Rule as well as Rule 80 of the negotiated Agreement when on November 13, 2002, the Carrier used a third party contractor to repair and assemble electro-pneumatic car retarder cylinders. The Organization argued that work on car retarder systems is specifically covered by the Scope Rule and the use of a third party to perform work of the nature here involved caused the Claimants to suffer a loss of earnings as that term is used in Rule 80.

The Carrier informed the Organization that the work in question consisted of removing a defective cylinder from the car retarder system and returning it to the manufacturing company under the terms of a warranty agreement. The manufacturer replaced the defective cylinder which was installed in the car retarder system.

The Carrier pointed out, without challenge or disagreement from the Organization, that the defective cylinder was removed by Signalmen and the replacement cylinder was installed by Signalmen.

There is no evidence or argument in the case record to probatively establish or to substantially dispute the Carrier's contention that the cylinder was under warranty by the manufacturer. While the Organization did argue that specific details of the warranty agreement were not provided by the Carrier, there is no evidence in the case record to prove that the Carrier's contention in this regard is erroneous or otherwise invalid.

It is well established that warranty work is not covered by a Rules Agreement. As was held in Third Division Award 31727:

“ . . . where the work is performed without cost to the Carrier and under the terms of its original equipment purchase, it can be readily established that the Organization can point to no contractual provision requiring the Carrier to ignore such service.”

It is also well settled that Carriers may purchase finished products. These same parties were involved in Third Division Award 36765 which so held. In addition, Third Division Awards 28195, 23020, 21232, among others, have repeatedly held that “. . . off-property work is not contemplated by the Agreement” (Third Division Award 21232) and that “. . . the Carrier may purchase assembled equipment without violating the Scope Rule” (Third Division Award 23020).

There is no dispute in this case that the work complained of here was warranty work performed by the manufacturer which sold the car retarder cylinder to the Carrier. There is no dispute in this case that all of the on-property removal and reinstallation work was performed by Signalmen. There is no proof in this record to show a violation of either the Scope Rule or Rule 80. Therefore, the claim as presented is 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 22nd day of August 2006.