Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37974
Docket No. SG-37453
06-3-02-3-519

The Third Division consisted of the regular members and in addition Referee John R. Binau when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 T. D. Clark, for four hours at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Appendix 9-B and Rule 4, when it used an outside vendor to install a mobile radio in a company vehicle on July 6, 2001, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1283148. General Chairman's File No. S-App-9B-172. BRS File Case No. 12188-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 present case is brought by the Brotherhood of Railroad Signalmen. However, the Collective Bargaining Agreement at issue is not the Agreement that pertains to work in the Signal Department, but is the Agreement governing telecommunications work. Prior to the merger of the Union Pacific and the Southern Pacific, the majority of telecommunication work was governed by an Agreement with the International Brotherhood of Electrical Workers (IBEW). Telecommunications work on a portion of the Union Pacific was governed by a separate Agreement with the BRS. The BRS still represents some Telecommunication Workers, but after the merger of the UP and the SP, the Carrier, the IBEW and the BRS entered into an Implementing Agreement by which the employees formerly governed by the separate BRS Agreement are now governed by an Agreement that is identical to the IBEW Agreement.

In this case the Carrier leased a vehicle from a supplier (Gelco). As part of the lease agreement with Gelco, the owner of the leased vehicle installed a radio along with other equipment prior to the vehicle being delivered to the Carrier. The Claimant found the radio installed in vehicle unit 62001 when it arrived on the property on July 6, 2001.

The Organization filed the instant claim contending that the Carrier had violated Appendix 9-B of the controlling Agreement. The Organization stated that the Carrier used an outside vendor who is not covered by the Agreement to install a radio in a company vehicle prior to the vehicle's arrival on the property. The Organization contended that the Carrier failed to give advance notice of its intent to contract out the work in question as required by Article II, Section 2 of Appendix 9-B. The Claimant, who is a Telecommunications Electronic Technician, contended that he was deprived of fours at the time and one-half rate as a result of this alleged violation.

The Carrier denied the claim by stating the radio was installed along with other equipment as part of the lease agreement with the owner of the vehicle. The Carrier pointed out that it is not required to piecemeal such installation work. The denial further noted that prior Awards had addressed and rejected similar arguments, finding that work on vehicles which are not under the control of the Carrier is not a violation. In particular Second Division Award 13174 held:

> ". . . Many arbitral decisions have held, when addressing the questions of work performed on leased equipment, that the

equipment first must be within the control of the Carrier. For example, see Award 63 of SBA No. 570, which in pertinent part stated:

> 'In order for the Carrier to be able to engage in subcontracting it first must legally own, or have dominion over the subject matter . . . of the subcontract. The Carrier cannot legally subcontract a vehicle to which it has not title.'

Therefore, until the leased vehicle comes under the control of the Carrier, the work does not belong to the Organization. . . ."

The parties exchanged appeals and denials with their positions not changing. In their last correspondence on the property, the Organization stated that the vendor does not own the radio, on the contrary the Carrier owned the radio. It stated that the vendor simply installed the radio in the vehicle for the Carrier. The Organization contended that the Carrier was attempting to circumvent or sharp shoot the clear provisions of the Agreement by utilizing a contractor.

The Organization also argued that the crux of the dispute is not whether the work of installing radios into vehicles is covered work, but whether the Carrier violated the Agreement in this case when it allowed Gelco to perform the work of installing a company owned mobile radio into a company leased vehicle prior to its arrival on the property. The Organization contended that any installation of radios is covered work and can only be performed by outside forces under the strict provisions of Appendix 9-B, Subcontracting, of the Agreement. The Organization cited numerous Awards to support its position that the Carrier failed to give proper notice of the sub contracting or give reasons for the subcontracting as required by the Agreement. The Organization concluded that the Carrier owned the radio in question and could not have it installed by an outsider without complying with Appendix 9-B.

The Carrier argued that the Organization must prove that the Agreement prohibits the Carrier from receiving a vehicle from a leasing company in which the leasing company has already installed a radio, amongst other equipment. It asserted that the Organization could not support its claim of Rules violation with substantial evidence because this issue has already been decided in the Carrier's favor. It stated that the issues involved in this case have previously been decided on

this property and, accordingly, there is no reason for the Board to reach a different outcome.

The Carrier argued that the very same Rules cited by the Organization in this case were at issue before Public Law Board No. 6397 and the very same arguments were made there as presented here. The Carrier stated but for the dates and the fact that this is the BRS rather than the IBEW pursuing the claim, Award 4 of PLB No. 6397 was identical to the present case. The Carrier maintained that the Organization in the instant case presented the same arguments that were rejected in Award 4, including the argument that the Carrier had supplied the radio in question. The Carrier concluded that PLB No. 6397 did not find those arguments persuasive and that the Board should find the same way.

After reviewing the positions of both parties, the Board finds no reason not to follow the decision previously reached in Award 4 of PLB No. 6397 on this property. That Award held:

> "On March 5, 1998, Auto Truck Inc., installed a radio on a truck Gelco, a leasing company, was supplying to Carrier. Carrier owned and supplied the radio. Carrier contends that the lease agreement requires that the trucks delivered to it be delivered with company radios. The Organization responded by stating that Carrier employes have installed all radio equipment in Carrier vehicles in the past whether leased or owned. The work clearly belongs to the Electrical Craft and should be assigned.
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> The issue here is not whether installation of radios belongs to Electricians. The issue is, even if it does belong to Electricians, do they have the right to install Company-owned radios on vehicles that are owned by a leasing company that will lease the vehicles to Carrier. The facts of the instant dispute are not in dispute. Auto Truck Inc., installed a Carrier-supplied radio on a truck Gelco was delivering to Carrier. The installation occurred at Bensonville, Illinois, and Gelco delivered the truck to the Carrier at Rowlins, Wyoming.
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> This Board has reviewed the record and studied a number of awards submitted by the parties on this issue. As a result of that study, the

Board has concluded that the Organization does not have a claim to work performed by the lessor.

While Carrier supplied the radios to Gelco, the installation of the radios in the trucks is not under the control of Carrier, nor was the work done on Carrier property. The right of the Organization to install radios in vehicles owned or leased by Carrier has some merit. An attempt by the Organization to stretch that right to equipment owned by an outside company has no validity."

The Board agrees that work performed outside of railroad property on equipment not under the control of the Carrier does not violate the Agreement.

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 25th day of October 2006.