

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40626
Docket No. SG-39046
10-3-NRAB-00003-050476
(05-3-476)**

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: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of W. Reaves, for 12 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope), Rule 32 and Appendix B-3, when it allowed a supervisor to perform Scope-covered work at Hoboken (ROC), Penn Station, Newark and Union Tower, Rahway, New Jersey, on Saturday, January 24, 2004, and denied the Claimant the opportunity to perform this work. Carrier’s File No. NEC-BRS(S)-SD-1042. General Chairman’s File No. JY321010092-102049. BRS File Case No. 13325-NRPC(S).”

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.

This claim concerns the work of installing remote data terminals. The work was performed at the Hoboken (ROC) New Jersey; Penn Station, which is located in New York, New York; Newark, New Jersey; and Union Tower, which is located in Rahway, New Jersey. The Claimant is an Electronic Technician. On January 24, 2004, the Claimant prepared the work for the installation of the terminals, and Communications Maintainer Chapin tested the communication lines and modems. The Organization argued that the work performed belonged to the Claimant pursuant to the Scope Rule. Additionally, the work was continuous with his tour of duty under Rule 32 and required an overtime preference to the work under Appendix B-3. Therefore, the Carrier violated the Agreement when it permitted Special Duty Dispatcher Instone and New Jersey Transit Supervisor Moore to perform the remote data terminal installation.

The Carrier's central argument is that the Claimant had no right to the work performed because the equipment did not belong to the Carrier. The Carrier contended on the property that the installed data terminals were purchased by and belonged to New Jersey Transit. Furthermore, the location where they were installed (Hoboken, New Jersey) was not Carrier property.

The Board carefully looked at the full on-property record. The Organization argues that both Penn Station and Union Tower are Amtrak property. It argues that the installation of data terminals belongs to the BRS-represented employees and not to Amtrak or New Jersey Transit management. And finally, it argues that the Claimant performed the preparation work at straight time and should have been permitted to complete the work at the overtime rate.

The record here does not support the Organization. The Carrier's principal argument was that the equipment did not belong to Amtrak. It argued on the property for the exception to the Scope Rule, which states:

“This Agreement shall not be construed as granting to employees coming within its Scope the exclusive right to perform the work of installing or maintaining other than Railroad owned facilities or equipment located on the property of the Railroad.”

It made the argument that the Claimant had no right to the work because the data terminals belonged to New Jersey Transit. There is no direct rebuttal to the assertion that the equipment belonged to another railroad, not Amtrak, and only partial rebuttal to the location.

Accordingly, the Organization’s primary arguments that the Claimant performed the preparation work or that an Amtrak Supervisor aided in the installation are not persuasive when none of the equipment belonged to the Carrier and Hoboken was not Amtrak property.

The burden of proof belongs to the Organization. Without evidence that the equipment belonged within the scope of the Agreement and that the Claimant had a demand right to the work, or probative evidence detailing Amtrak’s “installation” work performed on Carrier equipment and Carrier owned facilities, the burden of proof has not been met. Therefore, the claim at bar 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 27th day of August 2010.