

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31518  
Docket No. SG-31843  
96-3-94-3-164

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal Railroad Association of St. Louis (TRRA):

Claim on behalf of D. H. Wilkins, C. E. Rogers, E. K. Hubbard, V. G. Brandon, and S. B. Witthauer for payment of 24 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized an outside contractor to perform the covered work of installing conduit for the signal system at 'Q' Tower Interlocking Plant in East St. Louis, Illinois, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 930227.01. BRS File Case No. 9274-TRRA."

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 waived right of appearance at hearing thereon.

This is a Scope Rule claim filed by the Organization for alleged violation in the assignment of signal work to an outside contractor. The Organization argues that Kamadulski Excavating Company was used by the Carrier to install signal system conduit, work reserved to the employees.

The Carrier's position on the property is to deny the violation and raise procedural issues over the claim date and Claimants.

The Organization pointed out that there were three contractors working and this dispute involved the Carrier's use of Kamadulski Excavating Company "with the Carrier's authorization and sanction."

While this dispute was pursued on the property, the Carrier never sufficiently rebutted the allegations of the Organization. Nowhere can this Board find any Carrier statement that the work performed was not under its control. This Board may not consider arguments raised for the first time in Submissions. Such arguments are improper and will not be addressed. Accordingly, the probative evidence of record supports the claim.

The Board finds no rebuttal to Carrier's position that Claimant Brandon was an improper Claimant and so holds. Claim is sustained for the remainder of the Claimants for lost work opportunity due to the work performed by Kamadulski Excavating Company.

#### AWARD

Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of June 1996.