

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37020  
Docket No. SG-37013  
04-3-01-3-616

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn 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 Company:

Claim on behalf of D. H. Richey, M. J. McNace, and J. G. Jensma for payment of 10 hours each at the straight time rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on August 15 and 16, 2000, Carrier allowed an outside contractor (Kevin Ring Bulldozing) to haul and fill dirt and level the fill to set foundations for a highway crossing signal warning device at MP 309.2 on the Boone Subdivision in Iowa. Carrier's action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1247790. General Chairman's File No. NSCOPE-111. BRS File Case No. 11770-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 Organization has not met its burden of establishing an exclusive practice of hauling and leveling fill dirt to set foundations for a highway crossing. See Third Division Award 31990. The record indicates that the historic practice has been to use other than signal employees for such work. It is apparent that the work in question is not reserved to the Claimants by Rule or past practice. See Public Law Board No. 4716, Award 33. Therefore, we must deny the claim.

**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 18th day of May 2004.