

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37062  
Docket No. SG-36502  
04-3-00-3-769

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 Company:**

**Claim on behalf of J. G. Niehues and G. P. Butler for payment of 40 hours each at the straight time rate. Account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when on October 19, 20, 21, 22 and 25, 1999 Carrier allowed outside contractors to install an Automatic Equipment Identification (AEI) device at Mile Post 61.25 on the Kansas City Service Unit between Lawrence and Topeka, Kansas depriving the Claimants of the opportunity to perform this work. Carrier’s File No. 1213751. General Chairman’s File No. Nscope-016. BRS File Case No. 11483-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 assigned to the positions of Signal Gang Foreman and Signaller respectively at Topeka, Kansas. They were fully employed on their regular assignments when the Carrier utilized the services of an outside contractor to install Automatic Equipment Identification (AEI) equipment in the territory covered by the Claimants.

The Organization alleged that the AEI equipment is activated through the signal system and is therefore covered by the Scope Rule of the Agreement. It further contended that the installation of such a device had always been recognized as signal work and therefore is reserved to employees covered by the Agreement.

The Carrier insisted that the work associated with AEI installation is not covered by the Scope Rule and that the Organization failed to offer any evidence to show that such work had been exclusively performed by signal employees on a system-wide basis.

From the Board's review of the case record, we find that the work of installing AEI equipment is not specifically covered by the Scope Rule here involved. The record is devoid of any proof or evidence that such work had been exclusively performed by Signalmen in the past. Additionally, there is no evidence to show that the AEI equipment affects or is otherwise connected to the signal system that controls the movement of trains. These contentions as made by the Carrier were never refuted or otherwise disproven by the Organization. In short, the Organization's burden of proof has not been met. Therefore, the claim is denied.

**AWARD**

Claim denied.

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**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 June 2004.**