

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35638  
Docket No. SG-35499  
01-3-99-3-415**

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 (UP):**

**Claim on behalf of G.A. Higbee, B.G. McCall, T.L. Paulsen, E.E. Madsen, S.M. Leisinger and P.A. Halstead for a total of 80 hours each at their applicable straight time rates, account Carrier violated the current Signalmen’s Agreement, particularly Scope Rule, when it utilized an outside contractor to perform covered signal work by installing automatic equipment identifiers at MP 34 CB/Sub Nebraska Division, and denied the Claimants the opportunity to perform the work. Carrier’s File No. 1136546. General Chairman’s File No. 81015023. BRS File Case No. 10970-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 crux of this dispute centers on the Carrier's use of an outside contractor to install Automatic Equipment Identifier (A.E.I.) equipment. The exact date of this installation is not identified in the case record. The Organization's claim alleged that:

**"On January 30, 1998, the Union Pacific Railroad Company allowed an Outside Contractor, S.A.I.C. of Missouri, to complete installation on track equipment and instrument housing for use with Automatic Equipment Identifiers (A.E.I.) at Mile Post 34 CB/Sub Nebraska division" (Emphasis added.)**

No other dates of alleged performance by the outside contractor are identified.

The Organization alleged that "under past practice Signal Department has always done the installing of A.E.I. sites . . ." (Emphasis added.) Because of this alleged violation, the Organization claimed 80 hours pay for each of the Claimants. Nothing was offered to establish the amount of time claimed. The Claimants were regularly assigned to signal Gang 5107 at Omaha, Nebraska, and were fully employed on the claim date.

For its part, the Carrier denied the claim contending that the negotiated Scope Rule did not reserve the installation of A.E.I. equipment exclusively to Signalmen and that in the past at several locations over the Carrier's property, outside contractors had been used to make such installations. The Carrier insisted that no actual "proof" of the alleged violation or of the amount of time the outside contractor worked on the property had been presented by the Organization and that the claim was not supported by proof and should be dismissed.

There is no question but that the burden of proof to support a claim with substantial probative evidence rests with the moving party to the dispute. In this case the moving party is the Organization. After reviewing the case record as presented to the Board, it is the Board's opinion that this dispute cannot be resolved due to the lack of evidence to support the contentions advanced. Therefore, the claim is denied for lack of proof.

### **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 28th day of August, 2001.**