

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35846  
Docket No. SG-35285  
01-3-99-3-145

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railroad Signalmen  
**PARTIES TO DISPUTE:** (  
(Wheeling and Lake Erie Railway Company

**STATEMENT OF CLAIM:**

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling and Lake Erie Railway Company:

Claim on behalf of the D. L. Sampsel, M. Shelter, T. E. Durant, T. P. Riley and M. A. Bungert, Sr., for payment for 80 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used an outside contractor to make repairs to the Robertsville Tunnel, from October 13 through October 14, 1997 [sic]. Carrier's File No. 98-BRSMW.02. General Chairman's File No. 231/971116. BRS File Case No. 10906-W&LE(M).”

**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.

By letter dated October 2, 1997, the Carrier notified the Organization that due to severe damage to the Robertsville Tunnel and in order to secure stability and because the repairs required special equipment and skills not available within the Carrier, the Carrier intended to contract out repairs to that tunnel. This claim followed as a result of the work being performed by an outside contractor, HEB Construction, during the period October 13 through 24, 1997.

The Scope Rule provides in pertinent part:

**"RULE NO. 1 SCOPE RULE**

This agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, maintenance, inspection, repairing, and salvage of the following owned by the Railway:

- A. All structures, signs, tracks, roadbeds, right of ways, road crossings, and their components on the road and in yards, including all track and switch appurtenances and related systems. As well as any other work generally recognized as maintenance of way or bridge and building work.

\* \* \*

- C. This shall not prevent the carrier from contracting services requiring special skills or equipment not available to the carrier i.e. ballast cleaner, Sperry rail defect detector, road asphalt equipment, etc."

\* \* \*

Under the facts presented and in light of Rule 1(C), the Organization's burden to demonstrate a violation of the Agreement has not been carried.

The record reveals that the special equipment not available to the Carrier including a backhoe, frontend loader, dump truck, rock drills, shotcrete equipment and large capacity compressor were needed for this project. Further, while the record shows

that while the Claimants have over 70 years combined experience in bridge and building work and may have assisted in some of the work in the past (e.g., gunite work), the record does not show that the Claimants have performed the work to the extent necessary to defeat the Carrier's position that special skills not possessed by them were needed to perform the work. Based on what has been presented, Rule 1(C) permits the Carrier to contract the work involved in this case.

The claim will 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 18th day of December, 2001.