

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39908
Docket No. SG-38773
09-3-NRAB-00003-050194
(05-3-194)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (formerly Gateway Western):

Claim on behalf of J. B. Butler, B. A. Hartline and P. W. Morton, for the difference between the Traveling Signal Maintainer’s rate of pay and the Signal Maintainer’s rate of pay starting October 27, 2003, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Article 1 - Wages, Section 1 – General Wage Adjustments, and the revised Appendix 2 - Pay Classes, when it improperly reduced the Claimant’s rate of pay from the Traveling Signal Maintainer’s hourly rate of pay to the Signal Maintainer’s hourly rate of pay, causing a loss of compensation to the Claimants. Carrier’s File No. G0604-5843. General Chairman’s File No. 04-012-GWWR-185. BRS File Case No. 13060-GWWR.”

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 are J. B. Butler, B. A. Hartline and P. W. Morton, who at the time that this dispute developed, were assigned as Traveling Signal Maintainers.

The Carrier, in a letter dated December 16, 2003, notified the Organization, specifically regarding the Claimants, about the application of the September 24, 2003 BRS National Agreement on the Gateway Western Railway. The Carrier discovered that Signal Maintainers on the former Gateway Western were being improperly paid at the rate of Traveling Signal Maintainers. The letter reiterated the Carrier's October 27, 2003 notification that the rates of pay would be adjusted when the National Agreement was placed into effect and that the Carrier would not seek to recoup the overpayments. The Carrier indicated that the Claimants should have been characterized as Signal Maintainers, and thus were not entitled to the Traveling Signal Maintainer rate of pay.

By letter dated January 21, 2004, the Organization disagreed with the Carrier's position. By letter dated February 9, 2004, it filed a continuing claim on behalf of the Claimants objecting to the Carrier's reduction in the rate of the Claimants' pay from the Traveling Signal Maintainer's hourly rate to the Signal Maintainer/Signalman hourly rate of pay. The Carrier denied the claim, asserting that former Gateway Western Signal Maintainers are not Traveling Signal Maintainers.

According to the Organization, the Carrier violated Article 1, Sections 1 and 2, as well as revised Appendix 2. The Organization claims that the Claimants

should have been classified as Traveling Signal Maintainers and compensated at that rate.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier first contends that the matter was not properly conferenced on the property. According to the Carrier, the Organization engaged only in a telephone conference and refused to engage in a "face to face" conference on the property. Said lack of a conference requires that the matter be dismissed on jurisdictional grounds. Further, the Carrier contends that it acted properly because the Claimants were not being compensated at the correct rate.

After a review of all facts and circumstances in this case, the Board finds in favor of the Carrier. As to the Carrier's argument that the Organization refused to participate in a "face to face" conference on the property, the Organization's letters of August 20, and September 30, 2004 specifically indicate that it was willing to participate in a live conference. However, as to the merits, we find that the Organization has been unable to meet its burden to prove that the Claimants were actively employed as Traveling Signal Maintainers and that the Carrier acted improperly in classifying the Claimants as Signal Maintainers and compensating them as such. Therefore, the claim is 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 31st day of August 2009.