



Award No. 18794
Docket No. SG-19040

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company that:

(a) Mr. R. L. Wright be compensated at the Signalmen's rate of pay for all services rendered during the period of February 18, 1969 to March 28, 1969, inclusive, while he was filling a Signalman's position on Signal Gang No. 3710, subject to the limitations imposed by Rule 41 (a) of the Agreement.

(b) Effective with April 10, 1969, and continuing as long as this violation existed, Mr. Wright be compensated at the Signalmen's rate of pay for all services rendered while filling a Signalman's position on Signal Gang No. 3711.

(Carrier's File: No. A-10425)

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the present parties bearing an effective date of April 1, 1962, which is by reference made a part of the record in this dispute. Particularly pertinent here are the following rules thereof:

"RULE 15. PRESERVATION OF RATES.

When an employe fills the position of another employe receiving a higher rate, he shall receive the higher rate, but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed except a lower rated assistant signalman relieving another assistant signalman will continue at his own rate of pay."

"RULE 19. SENIORITY CLASSES.

Seniority classes will be as follows:

Class 1 — Signal shop foreman
Signal foreman
Signal inspector
Assistant signal foreman

By letter dated January 27, 1970, Chief Engineer Brown confirmed conference on the subject matter held on January 20, 1970 with General Chairman Parsons and reiterated his declination of the claim. Copy attached as Carrier's Exhibit J.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that Claimant filled signalman's position on Signal Gang No. 3710 February 18, 1969 to March 28, 1969, inclusive, and beginning April 10, 1969, he filled a signalman's position on Signal Gang No. 3711.

The Carrier contends that Claimant was assigned temporarily as assistant signalman in the gangs; that he did not perform any work that could not properly be performed by an assistant signalman, and that he was not a qualified signalman.

The Petitioner has cited no rule prohibiting the use of Claimant as assistant signalman in the gangs. There is no showing that the consist of the Carrier's signal gangs Nos. 3710 and 3711 as stated in the Signal Supervisor's telegram to the Local Chairman of November 26, 1969, was the result of an agreement. That telegram alone cannot be construed as prohibiting the Carrier from using assistant signalmen in the gang. The Petitioner has submitted no evidence as to the work performed by the Claimant, or any evidence that he performed the work of a signalman, and has failed to prove that he filled the position of a signalman within the meaning of Rule 15. The claim will be denied for lack of proof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1971.

**DISSENT TO AWARDS NOS. 18794 AND 18795
DOCKETS NOS. SG-19040 AND SG-19041**

The majority asserts that the Petitioner submitted no evidence to prove that the Claimant filled the position of a signalman within the meaning of Rule 15. It will be noted that there is no contention that the signalman's position was not filled in any sense, and indeed it is well that no such contention was made. The Claimant was called to service because of the absence of a signalman, and it is clearly stated by the Carrier that its call to the Claimant was due primarily to the absence of the signalman and to maintain the force complement of the signal gang adequate to perform the work. Certainly, an adequate force complement cannot be maintained by working an employe as a student instead of the regular promoted employe.

Thus, since the work force complement was maintained, the Claimant did fill the higher (signalman's) position within the meaning of Agreement Rule 15.

Awards Nos. 18794 and 18795 are in error, and I dissent.

/s/ W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member