

Award No. 18795
Docket No. SG-19041

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:

Mr. W. E. Brown be compensated at the Signalman's rate of pay for all services rendered during the period of February 24, 1969 to March 28, 1969 inclusive, while he was filling a Signalman's position on Signal Gang No. 3710. (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
Assistant signal shop foreman
General relay repairman
General C.T.C. maintainer
Retarder yard maintainer
C.T.C. carrier maintainer
Relay repairman
Leading signalman
C.T.C. maintainer
Interlocking repairman
Signalman
Signal maintainer

the direct supervision of a qualified signalman and at no time performed any independent work on his own.

This is apparently the sole basis of the instant dispute which resulted in the claim being initially filed by Local Chairman Parsons under date of April 23, 1969, with Signal Supervisor Webb. Copy attached as Carrier's Exhibit A.

Signal Supervisor Webb declined the claim to Local Chairman Parsons under date of May 5, 1969. Copy attached as Carrier's Exhibit B.

Under date of June 28, 1969, Local Chairman Parsons advised Signal Supervisor Webb that his decision was not acceptable to the Organization. Copy attached as Carrier's Exhibit C.

By letter dated June 30, 1969, Local Chairman Parsons appealed the claim to Division Engineer McDonald. Copy attached as Carrier's Exhibit D.

On July 17, 1969, Division Engineer McDonald by letter declined the claim to Local Chairman Parsons. Copy attached as Carrier's Exhibit E.

By letter dated August 30, 1969, Local Chairman Parsons advised Division Engineer McDonald that his decision was unacceptable and that his claim was being submitted to General Chairman Wollbrinck for further processing. Copy attached as Carrier's Exhibit F.

Under date of September 15, 1969 General Chairman Wollbrinck appealed the claim to the Carrier's Chief Engineer Brown. Copy attached as Carrier's Exhibit G.

Under date of October 22, 1969 Chief Engineer Brown declined the claim to General Chairman Wollbrinck, copy attached as Carrier's Exhibit H.

By letter dated December 5, 1969 Chief Engineer Brown confirmed conference with General Chairman Parsons and further agreed to an extension of the applicable time limits upon the Organization's request for an opportunity to further investigate certain aspects of the claim. Copy attached as Carrier's Exhibit I.

By letter dated February 2, 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 dispute herein involves the same parties, the same rules, a similar factual situation and similar contentions by the parties as involved in Award 18794.

The Opinion in Award 18794, is applicable herein. We will deny the claim because of lack of proof by the Petitioner that Claimant filled the position of a signalman within the meaning of Rule 15.

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 Employees involved in this dispute are respectively Carrier and Employees 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 employee as a student instead of the regular promoted employee.

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