

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21677
Docket Number SG-21591

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signlamen
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood
of Railroad Signalmen on the Long Island Rail Road:

Claim No. 1, File SG-43-74

On behalf of H. Serper for the difference between the Helper and Signalman rates of pay account required to drive trucks without being paid the Signalman rate of pay September 27, October 2, 25, 28, November 4, 8, 13, 14, 18 and 19, 1974. We also demand that Carrier immediately stop the practice of Helpers driving trucks without being paid the Signalman rate of pay.

Claim No. 2, File SG-44-74

On behalf of R. R. Marquiss for the difference between the Helper and Signalman rate of pay account required to drive trucks without being paid the Signalman rate of pay October 8, 24, November 4, 7 and 20, 1974. We also demand that Carrier immediately stop the practice of Helpers driving trucks without being paid the Signalman rate of pay.

Claim No. 3, File SG-5-75

On behalf of D. Mastropasqua for the difference between the Helper and Signalman rate of pay account required to drive trucks without being paid the Signalman rate of pay Decmeber 6 and 13, 1974.

OPINION OF BOARD: On various dates during September, October and November 1974, the Signalman assigned to operate a carrier-owned vehicle was not available to do so. In their absence, Claimants, Signalman Helpers, were assigned to perform the driving duties.

The **Organization** alleges this practice is a violation of the **current** Agreement in that the Signaller Helpers are entitled to the **difference** between their Helper's rate of **pay** and that of **Signaller's** rate of pay when driving a vehicle because they filled a higher rated position on **the** dates **named** in each claim.

The Carrier's position is "the current **agreement** does not provide for paying" **Signaller** Helpers **under** the current agreement 'a differential of any type when he drives a truck, neither does the **existing** or previous **agreements** **require** that a helper be paid the **Signaller's** rate for driving a truck."

The Board's comments herein are **confined** to the current agreement which the Organization alleges was violated.

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We have in the record before us **nothing** but a bare allegation that the current Agreement was violated. We believe the Carrier in its statement correctly describes this matter and the precedent of this Board:

"As has been repeatedly stated by **all** Divisions of the National **Railroad** Adjustment **Board**, the mere assertion of a violation, does not, in **and** of itself, establish a **Rule** violation as a **fact**. The assertion must be supported by probative proof of a violation. **In** that respect, Carrier requests the Board to take note **of** assertive nature of this **claim** which completely ignores any basis in fact; it is nothing more **than** an **assertion**."

The record does not indicate what part or parts of the Agreement the **Organization** alleges were violated. The **Board** is not constituted nor does it have **the** obligation to speculate. The burden of **proof** of a specific violation of the specific part or parts of the agreement must be made **and** sustained. There is failure here to so do **and** the **claims** **will** be dismissed.

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;

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

The Claims **are** dismissed.

A W A R D

Claims dismissed

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1977.