

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24581  
Docket Number SG-24340

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Chicago and North **Western** Transportation Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen of the Chicago and North Western **Transportation** Company that:

(a) Carrier violated the provisions of the current Signalmen's Agreement **especially** Rule #76 when it unilaterally abolished **59b Mtnr. Irvington** at 7:00 a.m. June 2, 1980 on Bulletin #9 and established an hourly rated position at Blair, Neb. on same Bulletin to be in effect on same date as the abolishment.

(b) Carrier no" be required to compensate Mr. E. E. Gibson, the regular assignee on date position "as abolished, the difference in "ages and be re-imbursed for all expenses incurred in performing his job assignment, which would have been compensated to him had the job assignment not been **changed**, until his former position is restored." (Carrier File: 79-3-147)

OPINION OF BOARD: Claimant "as employed as a Signal Maintainer at **Irvington**, Nebraska. Such position "as established as a monthly rated assignment under the provisions-of Rule 59 (b). The Carrier abolished the position and simultaneously established an hourly rated position of Signal Maintainer at Blair, Nebraska. The Claimant bid on and "on the new position, which the Organization alleges, **"maintains** the same equipment".

The Organization argues that this occurrence violated Rule 76 in that the Claimant lost pay for noon meals and "the difference" in "ages between the hourly rate and the monthly rate. Rule 76 reads as follows:

'ESTABLISHED POSITIONS.

76. Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing rates of pay or evading application of these rules."

The Carrier argues that the Rule 59 (b) position "as abolished because the incumbent **employe** "no longer travels on a regular basis". Since Rule 59 (b) provides for "traveling assignments" to **employees "regularly assigned** to perform road work" (emphasis added), the Carrier has shown that justification for continuance of such position is not required or warranted.

In the alternative, the Organization has failed to provide proof convincing to the Board that the change was made "for the purpose of reducing rates of pay or evading application of these rules" rather than because of the **change** in traveling aspect of the position.

Award Number **24165** (Joseph Sickles) is of direct relevant here. This Award states as follows:

"There is **no question** that the economic amounts paid to a Signal Maintainer on a regular hourly basis with no overtime is significantly less than the amount of monthly compensation which would be paid to a Traveling **Signal Mainainer**. But that does not dispose of **the** case. Surely, a Carrier need not necessarily maintain a position indefinitely if the character of the work requirements have altered. Here, the Organization has an obligation to show, by a substantive preponderance of the evidence, that the Rules have been violated. In fact, the indications of record show that there is no significant amount of travel involved for the position and thus it is appropriate, under the language of the contract and various cited Awards, to permit the Carrier to function in the manner it did."

**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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983.