

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 24702
Docket Number SG24643

Ida Klaus; Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly Rule 805 **(c)**, when it on March 20, 1981, on signal bulletin No. 6, established an Assistant Signalman position on Signal Gang 1642, headquartered at Allen, Oklahoma, with territory Midland Valley and Kansas, Oklahoma and Gulf Railroads (Oklahoma Sibdivision [sic]). The Carrier established this position, bid in by K. D. Shires, covering relative the same territory and class of work as that of Monthly Rated Signal Maintainer F. **Batchelor**, headquartered at Muskogee, Oklahoma, who was dismissed January 30, 1981 from service without -just and sufficient cause and on the basis of unproven charges either before or during the investigation held February 6, 1981. Mr. **Batchelor's** position as a Monthly Rated Signal Maintainer was never abolished or re-bulletined, but was discontinued by the Carrier.

(b) Carrier should now be required to compensate Assistant Signalman K. D. Shires for the difference of his Assistant rate of pay and that of a Monthly Rated Signal Maintainer for eight (8) hours each day he fulfills the assignment as outlined in Bulletin No. 6, including all overtime and class of time 5 on Saturdays, account Carrier violated Signalmen's Agreement Rule 805 (c). This claim to begin the first day K. D. Shires works the Assistant Signalman's position at Allen, Oklahoma, and continuing until the position at Muskogee, Oklahoma is abolished or bulletined at the Signal Maintainer's monthly rate of pay. The time **will** be taken from Carrier's records." (Carrier file: K 315-212)

OPINION OF BOARD: The claim alleges that the Carrier violated Rule 805 **(c)** of the Signalmen's Agreement by creating an Assistant Signalman position to perform the work of a dismissed Signal Maintainer, instead of filling the dismissed employee's position. It is asserted that the Claimant, who was awarded the newly created position, should have been paid as a Signal Maintainer.

The Carrier responds that the Claimant did not perform the work of the dismissed Signal Maintainer, because that position ceased to exist when the Carrier consolidated two territories and needed only a single Signal Maintainer and an assistant. That, it says, resulted in the creation of the Assistant Signalman position and the placement in it of the Claimant, who performed the bulletined duties of assisting the Maintainer.

The Organization has produced no direct evidence that the Claimant actually performed the duties of a Signal Maintainer. It has not shown that he conducted his signal duties independently of the assigned Signal Maintainer or that he had the same responsibilities as the Signal Maintainer.

The Organization's case **rests solely** on the apparent inferences **to be** drawn from the undisputed fact that one Signal Maintainer and an assistant are now performing from a single headquarters territory all work previously maintained by two Signal Maintainers working out of separate headquarters.

The Board concludes that the claim is not supported either by clear and convincing direct evidence or by rational inference from facts presented. Accordingly, we cannot find that the Assistant Signalman and Signal Maintainer **positions** were the same and that the Claimant worked as a **Signal** Maintainer rather than as an Assistant Signalman. The claim will be denied.

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

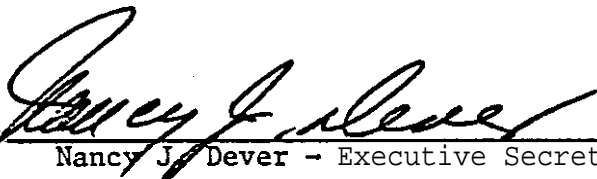
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.

