

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation (AMTRAK):

Claim on behalf of S. N. Hartman, for reimbursement of \$550.00 and payment of the difference between his Signalman's rate of pay and that of an Assistant Foreman beginning in July of 1988 and continuing until this dispute is settled, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 12 (b), when it recouped \$550.00 from him and refused to pay him at the Assistant Foreman's rate of pay. Carrier file NEC-BRS-SD-340. BRS file Case No. 7726-AMTRAK."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The record indicates that Claimant had been on and had been awarded a Signalman's position which had been advertised on April 13, 1987. Previously that position had been filled by a Mr. Harmon, until his death, as an Assistant Foreman. Claimant herein had been upgraded to Assistant Foreman by his Supervisor after being awarded the job, and was paid at that rate. Subsequently, another employee, who had more seniority than Claimant as a Foreman, filed a claim for the position, triggering an investigation by Carrier. As a result of that investigation, Carrier determined that the material supply functions performed by Claimant did not require the expertise of an Assistant Foreman and the upgrading of Claimant was ordered terminated and an action to recover what Carrier termed as improper payments to Claimant was initiated. It was this chain of events which triggered this Claim.

In addition to other arguments, Carrier maintains that this Claim was not timely filed. That contention is not supported by the facts and will not be dealt with further. The dispute will be resolved on the merits.

Carrier argues that its investigation established that Claimant did not perform any of the well-recognized functions of a Foreman, such as setting up or planning work for his subordinates. It concludes that it was justified, therefore, in terminating the improper upgrading of Claimant. Further, it is stated that Carrier is entitled to recoup the overpayments to Claimant since there is no prohibition in the Agreement for this action. The Organization on the other hand, makes the point that Claimant was performing the identical work as his predecessor and should be paid appropriately.

The record in this dispute is replete with assertions and deficient with regard to the facts. Thus it is impossible to determine the basis for Carrier's decision to recoup \$550, for example. Further, no evidence was included dealing with the nature of the settlement of the closely related claim filed by Mr. Kergis. The argument of "pyramiding" advanced by Carrier is never fully substantiated.

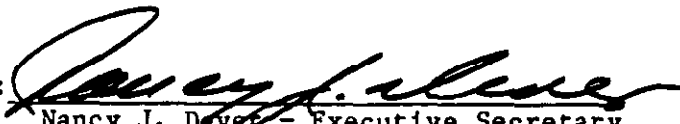
On balance, the Board believes that Carrier had the right to decide that the position in question did not require the skills of an Assistant Foreman. Consequently, Carrier was within its rights in terminating the practice of upgrading Claimant. However, in view of the meager facts presented and the clear mandate to upgrade by the local supervisor, Claimant should not have been penalized retroactively by the recouping of \$550. On the assumption that the Carrier did indeed recoup the money (and the record is ambiguous on this score) Claimant shall be made whole by that amount. In all other respects, the Claim must be denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.