

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32511
Docket No. SG-33585
98-3-96-3-1111**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

A. Claim on behalf of P. D. Hennrich for payment of two hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a non-covered management employee to test signal equipment at Mile Post 47 on the Chester Subdivision on September 5, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 960070. General Chairman's File No. 95-80-M-S. BRS File Case No. 10084-UP(MP).

B. Claim on behalf of D. G. Brandon for payment of two hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a non-covered management employee to test signal equipment at Signal 687-88 on the Chester Subdivision on November 2, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 960212. General Chairman's File No. 95-95-M-S. BRS File Case No. 10085-UP(MP).

C. Claim on behalf of L. A. Hicks for payment of two hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a non-covered management employee to test signal equipment at Signal 99.6 on the

Chester Subdivision on December 18, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 960211. General Chairman's File No. 95-94-M-S. BRS File Case No. 10086-UP(MP)."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

At the outset of the handling of this case, a procedural objection was raised which must be addressed as a threshold matter in our disposition of this case.

The Notice of Intent as presented by the Organization to this Board contained three separate and distinct claims for separately named Claimants relating to three separate instances at three separate locations on three separate claim dates. These three separate claims are set forth in the Statement of Claim, supra.

In its ex-parte Submission to the Board, Carrier completely ignored the claim identified in the Statement of Claim as Claim "C." In its ex-parte Submission, Carrier made specific references to the respective situations which took place as covered by Claims "A" and "B." Carrier made specific reference to the fact that it had "denied both claims" (underscore for emphasis) and proceeded to set forth its position in relation to Claims "A" and "B." No acknowledgment or position was presented in relation to Claim "C."

This raised the procedural issue of whether or not Carrier had, in fact, filed an ex-parte Submission in regard to Claim "C." The Board finds that Carrier did not, in fact, file an ex-parte Submission covering Claim "C." Its failure to do so leaves the

position and assertions of the Organization in regard to Claim "C" unchallenged and uncontroverted. Therefore, Claim "C" must be sustained as presented. This principle finds support in Awards 23577 and 23596 of the First Division; 14891, 24020, 24021, 24037 and 24352 of the Third Division; and Award 3970 of the Fourth Division.

As for the situations in Claims "A" and "B", the Board finds that there are not sufficient facts in the case record to establish the principal purpose for which the tests were made by the Supervisor. Therefore, Claims "A" and "B" are denied for lack of proof by the Organization.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of March 1998.