

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33519  
Docket No. SG-34276  
99-3-97-3-858

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

(Brotherhood of Railroad Signalmen  
**PARTIES TO DISPUTE:** (  
(Union Pacific Railroad Company

**STATEMENT OF CLAIM:**

***“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):***

**Claim on behalf of S. M. Leisinger for payment of the difference between the Assistant Signalman’s rate and the Signalman’s rate, beginning July 25, 1996, and continuing until this matter is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rule 21, when it used Signal Engineer’s forces to work in seniority District No. 2 without offering the Claimant employment in the Signalman’s class. Carrier’s File No. 1034341. General Chairman’s File No. 65211505/ BRS File Case No. 10418-UP.”**

**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.**

The facts are not disputed. The Claimant held a Class 1 Signalman's seniority, although he had yet to work that position. He was displaced immediately after obtaining his Class 1 qualification by a senior employee. The Claimant was able to obtain a position on District Roster 2. At the time of this dispute the Carrier assigned five Assistant Signal Technicians to work the territory of Roster 2 under the provisions of a training agreement.

The Organization alleges violation of Rule 21, in that the Claimant was not upgraded to his highest qualification on the Roster as per Agreement. The Organization argues that the Claimant should have been paid as a Class 1 Signalman since Signal Engineer forces were working the territory covered by District Roster 2.

The Carrier denies violation of the Agreement in that there were no Signal Engineer's forces occupying Class 1 positions working the territory. The Assistant Signal Technicians were permitted to work "on any seniority district" without usual bulletin or the application of the provisions of Rule 21. The Carrier maintains that Rule 21 was intended to ensure that Roster 1, 2 and 3 employees would not be deprived from positions due to Carrier's use of Signal forces and in fact, the Claimant was not held from occupying a Class 1 position by the use of Roster 5 training employees.

This is contract interpretation involving the meaning of Rule 21 (Use of Signal Engineer's Forces). That Rule states in pertinent part:

"During the time Signal Engineer's forces are working on a territory covered by one of the district seniority rosters, any employees on that district roster who are furloughed or working in a lower class will be offered employment in their highest qualification on the district involved."

The language of the Agreement is clear and its application to this set of facts leaves this Board constrained to follow negotiated provisions. In this instant case, the Claimant did hold a Class 1 Signalman's seniority. Roster 5 employees were working on the Claimant's territory. We find no evidence of record or language from the training agreement to hold that Roster 5 employees were not to be considered Signal Engineer's forces. The Carrier has pointed to no evidence for this Board to reach such a conclusion or exemption to the above Rule. Therefore, as the Claimant was working a Class 2 position, he should have been upgraded to a Class 1 position since Signal forces were working his territory. There is nothing in the negotiated language to either hold that

Roster 5 employees are not Signal forces as they are trainees or that since there were no Class 1 employees working the district, the Claimant should not have been upgraded. That is not a part of the language of the Agreement, nor is there any evidence to suggest practice to support that conclusion. Quite the contrary, the Board finds no rebuttal that under similar circumstances the Carrier paid the higher rate.

Accordingly, the Carrier violated Rule 21 when it did not offer the Claimant employment in his highest qualification. The Board finds no language providing the exception Carrier herein argues and cannot by Award create an exception not included by the parties. Therefore, the claim is sustained. The parties are to ascertain the days the roster 5 employees were on the Claimant's District and the Claimant was not upgraded from his Class 2 position to a Class 1 position. The Claimant is to be compensated under those circumstances where the Carrier violated the negotiated Agreement.

### **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 22nd day of September 1999.