

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33951
Docket No. SG-35049
00-3-98-3-798**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**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 J.L. Cristopherson for payment of the difference between the Signalman’s rate of pay and the Lead Signalman’s rate of pay for 132 hours straight time rate, 86.5 hours at the time and one-half rate, and 208.5 hours at the skill differential rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 36 and Appendix 9, when it used a junior employee instead of the Claimant for a Lead Signalman’s assignment from March 24 through April 15, 1997. Carrier’s File NO. 1078258. General Chairman’s File No. 76364895. BRS File Case No. 10850-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 record shows that between March 24 and April 15, 1997 the Carrier assigned the work of Lead Signalman on a tie gang at McCammon, Idaho, to an employee with less seniority than the Claimant. The Claimant asserts that he sought the work in question, but that the Foreman denied him his right to the work. The Carrier, on the other hand, asserts that the Foreman offered the work to the Claimant, but that he denied the offer.

As is evident from the description of the assertions of the parties set forth above, there are two disparately different versions of the facts giving rise to the claim. Thus, in order to resolve the matter the Board is called upon to determine from the factual record whether the work in question was offered to the Claimant and whether he rejected the offer. Sadly however, the Board has no method for resolving such credibility disputes and there is nothing in the record that might lead one to conclude that one version of the facts is entitled to weight than the other. Thus, the record presents irreconcilable disputes of fact which are central to the disposition of the claim and we have no alternative but to dismiss the matter.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of February, 2000.