

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33978
Docket No. SG-34679
00-3-98-3-338**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chicago and Eastern
(Illinois Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the C&EI Railroad:

Claim on behalf of E.C. Mack for payment for payment of an additional \$.12 per hour for all hours worked and reimbursement of his expenses, beginning 60 days prior to April 22, 1997, and continuing for the term of the violation, account Carrier violated the current Signalmen’s Agreement, particularly Rules 2, 4, 32, 65, 66, 67, 68 and 81, when it did not award a Leading T&T Maintainer position to the Claimant and then abolished the position and assigned the duties of the position to the Claimant on his Maintainer position. Carrier’s File No. 15(97-124). General Chairman’s File No. 97-25-03. BRS File Case No. 10530-C&EI.”

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 all material times herein the Claimant was serving as a Communication Maintainer, but did not possess an FCC radio license. When a Lead T&T Maintainer retired, the Carrier abolished his position and instead advertised a vacancy for a Lead Communication Maintainer, indicating that an FCC radio license was necessary. When the Carrier discovered that none of the applicants possessed the requisite license, it did not fill the position and instead assigned the Maintainer duties of the position in question to the Claimant.

The Organization argues that the Carrier violated Rule 81, which prohibits the Carrier from discontinuing positions and creating new ones “. . . under a different title covering relatively the same class of work . . . ” in order to reduce pay or evade the application of the parties’ agreed-upon Rules. Thus, there is nothing in Rule 81 that restricts the Carrier’s discretion to determine qualifications for positions, including the requirement imposed herein by the Carrier that the position requires an FCC license, and to refrain from filling positions when applicants do not possess those qualifications. Rather, under Rule 81, there is a violation only when the Carrier creates a lower rated position to replace a discontinued higher rated position and only when the new position covers relatively the same class of work.

In the instant matter the record shows that when no applicants were qualified for the newly created position the Carrier refrained from filling that position and assigned the Maintainer duties of the position to the Claimant. Therefore, no new lower rated position was created that covered relatively the same class of work and the claim must fail.

AWARD

Claim denied.

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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 28th day of March, 2000.