

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36232
Docket No. SG-36082
02-3-00-3-267

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Grievance on behalf of S. Priester for the abolishment of two Assistant Foremen positions on Gang Q-202 at the New York Trouble Desk and advertisement of an Inspector Foremen position on Gang Q-202 at the New York Trouble Desk; and the promotion of the Claimant to the rank of Inspector Foreman effective April 8, 1999, account Carrier violated the current Signalmen's Agreement, particularly Rule 4, when it abolished established positions on Gang Q-202 at the New York Trouble Desk and created new ones under different titles for the purposes of reducing pay. Carrier File No. NEC-BRS(S)-SD-825. General Chairman's File No. RM3257-102-0499. BRS File Case No. 11133-NRPC-S.”

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.

This claim protests the Carrier's downgrading of jobs on the New York Trouble Desk from Inspector Foremen to Assistant Foremen positions as a violation of Rule 4, which provides:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate or evading the application of the rules in this Agreement."

The record reflects that on December 4, 1986, the parties entered into an Agreement concerning the consolidation of the existing Northeast Corridor Trouble Desks, which confirms that those employed on Trouble Desks would have to be qualified Assistant Foremen, and establishes a procedure for joint review if a question arises concerning the workload of any of the Trouble Desks.

In August 1996, the Carrier implemented a plan under which Trouble Desk employees would have the ability to authorize the use of jumper cables to bypass malfunctioning circuits and expedite train movement in the New York area. Because the Carrier's Special Instructions Governing Maintenance of Signals and Interlockings (AMT-23) restricted the ability to authorize the use of jumper cables to Managers, Supervisors and Inspectors, positions on the Trouble Desk were upgraded from Assistant Foremen to Inspector Foremen to permit them to perform that function. As there is no classification of Inspector Foreman under the Agreement, employees received the Inspector's rate.

In the fall of 1998, the Carrier determined that the above-noted plan was not effective, and removed the function of authorizing the use of jumper cables from the Trouble Desk employees. At the time, two employees held the Inspector Foreman position at the New York Trouble Desk and there were two vacancies. The Carrier abolished the two vacant Foreman Inspector positions in November 1998 and advertised two new Assistant Foreman positions on the New York Trouble Desk in January 1999 with different hours and days of work. There was no change of title or wage rate for the existing employees, no bids were received for the first new position, and the Claimant received the other Assistant Foreman position. In April 1999, Rule 301(a) of AMT-23 was amended to prohibit any employee holding a position under the

Agreement to authorize the use of jumpers, limiting such entitlement to the Assistant Division Engineer, Supervisor or Assistant Supervisor C&S.

During the exchange of correspondence on the property, the Carrier stated that it was entitled to advertise the new positions on the New York Trouble Desk as Assistant Foremen positions consistent with its long time practice because the only function for which the position was upgraded was no longer being performed by employees. The Organization asserted that, as of August 23, 1999 the two remaining Inspector Foremen were still authorizing jumpers, and were unaware of the Rule change. No evidence substantiating this assertion was presented. The Carrier claimed that AMT-23 only requires Trouble Desk employees to maintain a log showing that jumpers have either been authorized or removed, and that employees are prohibited from authorizing the use of jumpers.

The Organization argues that the Carrier violated Rule 4 by discontinuing a position specifically agreed to by the parties, Inspector Foreman, and creating a new position, Assistant Foreman, on the same Gang where the work performed is the same, noting that a reduction in pay rate is the result. It asserts that the practice of using Inspector Foremen on the Trouble Desk is established, and may not be changed unilaterally, citing Third Division Awards 31424, 28214 and 8526.

The Carrier argues that no employee has suffered any wage loss, as the two employees holding the Inspector Foreman position have remained so titled and paid. The Carrier asserts that the Organization failed to prove that Trouble Desk employees still authorized the use of jumper cables after the fall of 1998, citing Third Division Awards 25177 and 25639 for the proposition that such failure of proof undermines the merits of the claim. The Carrier contends that once the function of authorizing the use of jumper cables was removed from the position, there was no longer any justification for retaining the Inspector Foreman classification and it was entitled to utilize the historical classification of Assistant Foreman to staff vacancies on the Trouble Desk.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that the Carrier violated Rule 4 of the Agreement in this case. While it asserted that the job functions of the Inspector Foremen on the Trouble Desk remained the same after the vacant positions were abolished and readvertised as Assistant Foremen positions, it failed to prove this despite the Carrier's assertion to the contrary and the acknowledgment that the amended governing

instruction, Rule 301(a) of AMT-23, prevented such employees from performing the very function they were upgraded for in 1996. At best there is an irreconcilable dispute of fact presented to the Board, which requires that the claim be denied. Further, the Board notes that the parties agreed to a procedure on the property for resolving disputes of fact concerning what type of work was being performed on the Trouble Desk when they adopted Appendix U on December 4, 1986. That procedure was not utilized in this case.

Accordingly, the claim must fail for lack of proof.

AWARD

Claim denied.

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 24th day of September 2002.