

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36401
Docket No. SG-36026
03-3-00-3-133**

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:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of J. G. Jensma for payment of thirty two hours at the straight time rate and 8 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 2 and Appendix A, when on July 10, 11, 13, 14, and 15, 1998, it allowed a District Signal Foreman to perform signal work of wiring and placing in service an instrument case at Ocheyedan, Iowa, (Main Street, M.P. 110.39) on the Estherville Branch and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1165534. General Chairman’s File No. 8c027778. BRS File Case No. 11254-C&NW.”

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 dispute involves multiple dates on which it is alleged that a District Signal Foreman violated the provisions of the Agreement when he allegedly performed work that properly accrued to a Signalman. The Claimant in this case was regularly assigned as a Lead Signalman. In fact, on July 14 and 15, 1998, he was working under the direct supervision of the District Signal Foreman in question.

The basis of the Organization's claims centers on Rule 2 - Classification and a Memorandum Agreement identified as Appendix "A" dated November 1, 1981, as amended. The pertinent language of these provisions reads as follows:

"RULE 2 - CLASSIFICATIONS

- (d) **Leading Signal Maintainer:** A signal Maintainer assigned to work with and direct the work of four or less Signal Maintainers and assigned a certain section, shop or plant, will be classified as a Leading Signal Maintainer.
- (e) **Leading Signalman:** A Signalman assigned to work with and direct the work of four or less Signalmen or other employees coming within the scope of this agreement, and not assigned to the maintenance of a certain section, shop, or plant will be classified as a Leading Signalman.
- (g) **Signalman or Signal Maintainer:** A man qualified by experience and training and assigned as a Signalman or Signal Maintainer will be so classified. When assigned to the maintenance of a certain section, shop, or plant, the classification will be Signal Maintainer; when assigned to a gang or crew, the classification will be Signalman.

Signalmen may work alone when assigned to specific duties.

Two Signalmen, with or without assistants, may work with a common headquarters as two independent employees, without the assignment of one as a Leader.

A Signalman may work as such in filling temporary vacancies of Assistant Signalmen and under the direction of a Signalman, without the

assignment of one as a Leader. If two Signalmen are directed to work together as such and not under the supervision of a Gang Foreman or Leading Signalman one will be classified and compensated as a Leader."

"Appendix 'A'

District Signal Foreman shall be monthly rated employees, which rate shall be based on 232.7 hours per month, and shall cover all service performed except as provided in Rule 2.

District Signal Foreman will supervise the work of employees of lower classifications in their district, and shall perform work coming within the Scope of the Signalmen's agreement, effective January 1, 1982 when incidental to, or as a consequence of, their duties."

From the case record it is undisputed that on July 10, 13, 14 and 15, 1998, the District Signal Foreman was supervising the work of other Signalmen who were involved in the wiring of a signal case. On July 11, 1998, it is undisputed that no work was performed on the signal case in question by either the District Signal Foreman or anyone else. As previously noted, on July 14 and 15, 1998, the District Signal Foreman was supervising the work of a four-man Signal Gang that included the named Claimant.

The sole evidence of record in this case consists of unsubstantiated remarks by the Organization to the effect that the District Signal Foreman "... jumps in with both hands, feet, and body and soul and an attitude of let me at it ..." and "... he's been doing that for years. ..." These "remarks" are followed by the Organization's candid admission that the Signalmen involved were "intimidated" and were "reluctant to provide statements." In short, there is nothing of a probative nature in the case record to show specifically what work was actually performed by the District Signal Foreman. NOTHING!!

Mere assertions cannot be accepted as proof. The burden is upon the Organization to prove that a violation of the Agreement has, in fact, occurred. It is evident from this case record that the claims are based on assertions and allegations and nothing more. Therefore, the Board has no recourse but to deny the claims in their entirety.

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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 18th day of February 2003.