

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36406
Docket No. SG-36350
03-3-00-3-539**

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 Company:

Claim on behalf of G. D. Frisbie for payment of the difference between the rate of Signaller and that of Signal Maintainer, plus all overtime. This claim to be effective starting June 7, 1999 through and including July 4, 1999. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 26, when it allowed a Signal Inspector to relieve a Signal Maintainer and deprived the Claimant of the opportunity to perform this work. Carrier File No. 1200394. General Chairman’s File No. SWGC-2013. BRS File Case No. 11244-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 Claimant in this case was assigned to a position of Lead Signaller. During the period of the claim, the incumbent of a Signal Maintainer position was off duty because of a medical condition. The claim as presented by the Organization alleged that the Carrier utilized the services of a Signal Inspector to perform the duties of a Signal Maintainer during the period of his absence. This, the Organization says, violated the provisions of Rule 26 of the Agreement which reads as follows:

“When Signal Gang Foremen are off during vacation periods, or for other reasons, they will be relieved by the Assistant Signal Foreman or Lead Signaller assigned to that gang, if available. If not available, they will be relieved by the senior qualified employee in Class 1 assigned to the Signal Gang.

When Signal Maintainers or Signal Maintenance Foremen are off for periods that exceed one week in duration, they will, if relieved, be relieved by the Relief Signal Employee; and if not available, the senior-qualified employee of Class 1 assigned to the Signal or Maintenance Gang.

The Carrier will make every effort to provide vacation relief on Signal Maintainer positions when the incumbent is off duty longer than one week.”

It is the Organization’s position that there was no “Relief Signal Employee” as referenced in Rule 26. It further contends that the Claimant was “the senior qualified employee of Class 1 assigned to the Signal or Maintenance Gang” as that expression is used in Rule 26. The Organization argued that a description of all the work performed by the Signal Inspector was submitted by him and was enclosed with its appeal letter dated October 4, 1999 to the Carrier. This description, it contends, showed that the Signal Inspector did not work anywhere else during the period of the claim other than on the territory of the absent Maintainer. This letter from the Signal Inspector plays a key role in the determination of this case and will be referenced later in this Award.

For its part, the Carrier argued that the language of Rule 26 is clear and concise in that the senior qualified employee of Class 1 is entitled to be used only if the position of the absent Signal Maintainer is specifically relieved during his absence. In this case, the Carrier insists that the Signal Inspector involved in this dispute was not specifically assigned to relieve the absent Signal Maintainer. In support of this position, the Carrier presented to the Organization a detailed statement from the Signal Manager

to this effect. This statement was included along with the Carrier's November 24, 1999 denial of the claim. This statement was never challenged by the Organization during the on-property handling of the case.

Returning to the Organization's contention before the Board to the effect that the Signal Inspector's description of the work he performed had been enclosed with its October 4, 1999 letter to the Carrier, the Board notes that the Signal Inspector's litany of events shows that it was date stamped as being received by the Organization on October 7, 1999. There is no convincing evidence to support the contention that this description of performed work was ever presented to the Carrier.

Assuming arguendo that the two descriptions of who did what and when - the Signal Inspector's outline and the Signal Manager's statement - are properly before the Board, we are left with a clear and irreconcilable dispute of material fact. This is a situation that the Board cannot resolve. Inasmuch as it is the Organization's burden to provide adequate proof to support its position and inasmuch as there exists in this case an unresolved dispute in facts, the Board has no recourse but to dismiss the claim as presented.

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 18th day of February 2003.