

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36569
Docket No. SG-36261
03-3-00-3-485

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen 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 Company:

Claim on behalf of G. E. Pankey for payment of the difference between the rate of Signal Foreman and that of Assistant Signal Foreman during the week of June 21 through June 24, 1999, inclusive. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 26, when it required the Claimant to relieve the Signal Foreman and then failed to properly compensate him for said service. Carrier File No. 1197209. General Chairman’s File No. SWGC-2006. BRS File Case No. 11242-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.

On July 15, 1999, the Organization submitted the following claim on behalf of Assistant Signal Foreman G. E. Pankey in which it was alleged that:

“During the week of June 21 thru 24, 1999, Mr. Pankey was the Assistant Signal Foreman assigned to Gang 8256. The Foreman was not available, and Mr. Pankey should have received the Foreman rate of pay. Manager S. R. Smith has refused to compensate Mr. Pankey according to the Agreement.

Mr. Pankey should now be compensated the difference between the Assistant Signal Foreman rate of pay and the Signal Foreman rate of pay for all straight time worked and the overtime rate for all overtime worked during the week of June 21 thru 24, 1999. Mr. Pankey should also receive all benefits that he may have been deprived of."

In his denial, the Manager Engineering Resources maintained:

"I understand that the reason we have the Assistant Signal Foreman is so we do not have to pay the Foreman's pay because the Assistant Foreman is qualified to run the gang in the absence of the Foreman. The agreement was not violated and your claim is null and void."

The Carrier also noted that on the dates at issue Signal Foreman, R. J. Gonzalez, Sr. was working and available, and was not away from the job site as the Organization alleged.

Agreement Rules 21 and 26, pertinent to this dispute, state:

"RULE 21 - FILLING HIGHER RATED POSITION

When an employee is required to fill the place of another employee receiving a higher rate of pay, he will receive the higher rate, but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed.

RULE 26 - RELIEVING FOREMEN AND MAINTAINERS

When Signal Gang Foremen are off during vacation periods, or for other reasons, they will be relieved by the Assistant Signal Foreman or Lead Signalman assigned to that gang, if available."

The Organization alleges that Foreman Gonzalez was away from the gang on the dates at issue. For its part, the Carrier maintains that Gonzalez was "working and available to answer questions if needed." Under the circumstances, the record supports the Carrier's assertion that the Signal Foreman was working and available throughout the June 21 - 24, 1999 time period, and while the Claimant may have been supervising employees during the claim dates, he was doing so per the express language contained in Rule 21 of the Agreement. We find no violation of the Agreement. Therefore, this claim must be denied.

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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 16th day of June 2003.