

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36882
Docket No. SG-36827
04-3-01-3-378**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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):

Claim on behalf of D. J. Smith for payment at the Signal Foreman's rate for all hours beginning on April 17, 2000, and continuing for the term of the violation. Carrier should also be required to restore the Signal Foreman's position. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule (Rule 1) and Rule 4, when on April 17, 2000, Carrier abolished a Foreman's position and assigned the work to a non-covered position. Carrier's action deprived the Claimant of the opportunity to perform this work. Carrier's File No. NEC-BRS(S)-SD-904. General Chairman's File No. JY 32105-18800. BRS File Case No. 11801-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 abolishment of the position of Office Foreman, Gang K012, held by the Claimant, and seeks its restoration as well as lost earnings. The position, headquartered in the office of the Assistant Division Engineer-C&S at 30th Street Station, Philadelphia, was created to augment the Senior Engineer with the day-to-day administration of office records and involved the manual preparation of reports, filing Hours of Service Reports, FRA-required test records, man count records, AMT-27 tests and blueprints, functions normally performed by the Senior Engineer, a position not covered by the Agreement. Apparently, the Carrier decided to post this as a Foreman position and the Claimant received it by bid. With the reduction in the backlog and increased use of computers, the Carrier determined that the position was no longer required and abolished it on April 17, 2000. Thereafter, the Senior Engineer did the required paperwork receiving necessary help from a clerical employee in the office. The Claimant exercised his seniority rights by displacing an employee in a lower rated Assistant Foreman position which he held from April 18 to June 16, 2000, when he was promoted to the management position of Systems Analyst.

The Organization argues that the Carrier violated the Scope Rule and Rule 4 when it abolished the Foreman position and assigned the work to a non-covered employee. It asserts that by the Carrier's posting and assigning the work to the Agreement position of Foreman, coupled with the Claimant's performance of the functions involved, which are generally recognized as signal work, the work in issue is encompassed within the Scope of the Agreement and cannot be discontinued and the functions transferred to a non-covered employee without violating Rule 4. The Organization contends that there is a past practice of performing these functions by a signal employee which cannot be changed without mutual agreement of the parties, citing Third Division Awards 13229, 28214 and 31423. It requests that the Foreman position in issue be restored and the Claimant be compensated for his loss of wages associated with the abolishment of his position.

The Carrier argues that the work of providing administrative support in the office of the Senior Engineer was never work reserved to Signalmen under the specific Scope Rule of the Agreement, which covers work generally recognized as telephone, telegraph or signal work, and has not been shown by the Organization to be customarily and traditionally performed by Signalmen to the exclusion of all other employees. It notes that management employees are generally responsible for maintaining records (relying on various job descriptions) and normally delegate their filing and some record keeping to clerical employees in the office as well as others, establishing a long-standing practice of performance of these functions with non-covered employees. The Carrier also contends that the Organization failed to establish a violation of Rule 4, as it was contractually entitled to abolish the position and there is no evidence that another position was created to perform the disputed work, which was assigned to existing staff who already had that responsibility. Finally, the Carrier argues that any loss of earnings suffered by the Claimant was of his own doing because he exercised his seniority to a lower rated position despite the fact that he could have held an equally rated Foreman position.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Scope Rule or Rule 4 in this case. The Scope Rule in this Agreement is specific in nature and sets forth functions primarily associated with the installation and maintenance of telephone, telegraph and signal work. It does not include the maintenance and filing of reports as being reserved to the craft. Thus, the language of the Scope Rule does not support the Organization's contention. Neither has the Organization proven that there is an established past practice of such work being performed by Signalmen under the Scope of the Agreement other than the Claimant's position which was admittedly created to aid the Senior Engineer in the performance of his specific responsibilities. Finally, the Board can find no evidence to support a violation of Rule 4 as no other position was created by the Carrier to perform the work the Claimant had been doing after the abolishment, and no evidence is present to establish that the Carrier's action was for the purpose of reducing the rate of pay or evading the application of the Rules of the Agreement. Accordingly, the 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 25th day of February 2004.