

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36939
Docket No. SG-36501
04-3-00-3-753

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (*Brotherhood of Railroad Signalmen*
(*Union Pacific Railroad Company (former Chicago &*
(*North Western Railroad Company)*

STATEMENT OF CLAIM:

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

Claim on behalf of K. L. Hopwood for payment of six hours at the straight time rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and the Memorandum of Agreement dated February 1, 1983, when on October 19, 20, and 21, 1999 it allowed a District Signal Foreman to perform FRA tests at CPA 148, CPA 155, and CPA 170, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1213749. General Chairman's File No. NART1-014. BRS File Case No. 11484-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.

On the dates indicated in the Statement of Claim, supra, the Claimant was assigned to a position of Signal Maintainer headquartered at Tama, Iowa. The penalty claim here under consideration contends that the Carrier violated the Agreement when a Signal Foreman allegedly performed certain tests of signal equipment at the time when the Claimant was available to perform the work.

The applicable Agreement Rule involved in this dispute is Appendix "A" - Article I District Signal Foreman, which reads as follows:

"Appendix 'A' - Article I District Signal Foreman

District Signal Foremen 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 Foremen 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."

The facts as developed during the on-property handling of the case show that a Signal Maintainer was assigned to conduct FRA tests on the signal system at three separate control point locations. The District Signal Foreman was on site supervising the work being performed by the Signal Maintainer. During the course of conducting the tests, the Signal Maintainer requested that the District Signal Foreman assist him (Signal Maintainer) in the performance of the tests. This fact is found in the handwritten statement presented by the Signal Maintainer and made part of the on-property record of the case handling.

The facts as found in the on-property record of the case also reflect that on the claim dates the Claimant not only performed his regular assigned duties and hours, but also worked overtime on each of the dates claimed. There was no apparent or proven loss of work opportunity sustained by him on these three dates.

It is apparent on the basis of the record which exists in this case that the "work" performed by the District Signal Foreman was not only in response to the specific request of the Signal Maintainer for "help" but also was well within the meaning of the Agreement Rule language relative to a District Signal Foreman's performance of work coming within the Scope of the Signalmen's Agreement "when incidental to or as a consequence of their (District Signal Foreman's) duties."

The claim as presented has no merit or Rule support and is therefore denied.

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 22nd day of March 2004.