

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36969
Docket No. SG-36206
04-3-00-3-423

The Third Division consisted of the regular members and in addition Referee Dana Edward 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 R. D. Price, for payment of the difference in the rate of pay between that of Signal Maintainer and that of Electronic Technician beginning on January 17, 1999, and continuing; and to have the signal maintainer's position at Warner, Utah re-advertised for seniority choice. Account Carrier violated the current Signalmen's Agreement, particularly Rule 32, when Carrier made a material change in the Claimant's assigned territory and then failed to re-advertise the position for seniority choice when requested to do so by the Claimant. Carrier File No. 1188754. General Chairman's File No. 95321824.1. BRS File Case No. 11313-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 facts giving rise to this claim are not in material dispute. The record shows that by letter of January 14, 1999, Manager Signal Maintenance R. Nash notified the Claimant that his territory (the "Warner territory") was being changed by the removal of a section of Track No. 1 between 744 and 764 and the addition of Smelter, Garfield and a section of Track No. 1 between 780.5 and 782.5. [According to the Claimant and the Organization, the 20-mile section that was subtracted had three crossings, five power switches on No. 14 turnouts and one electric lock; whereas the territory being added had three crossings, ten power switches on No. 20 turnouts, and two electric locks]. Premised on his conclusion that this added substantially more work to a territory that was "already too large," the Claimant filed a request that the Carrier re-advertise the Warner territory, in accordance with the terms of Rule 32 - Signal Maintainers Headquarters. The Carrier's declination of that request on grounds that Rule 32 did not require re-advertising in the facts and circumstances presented was the gravamen of the instant claim. [The record shows that the Carrier subsequently re-advertised the Warner territory, after the headquarters was also changed; but, by that time, the Claimant had already exercised his seniority to place on another vacant position].

The governing contract language of Rule 32 - SIGNAL MAINTAINERS HEADQUARTERS reads, in relevant part, as follows:

"When a change is made in the location of a signal maintainer's headquarters or when a signal maintainer's territorial limits are materially increased, or when the starting time is changed more than two (2) hours or when one or both of the rest days are changed, the position will be re-advertised as a new position when so requested by the incumbent through the local chairman. Such request must be in writing and made within twenty (20) calendar days from date of change."

It is manifest that none of the listed conditions precedent occurred, that would have triggered the contractual requirement of re-advertising under the above-quoted language of Rule 32. Indeed, the territorial limits of the Claimant's territory were not materially increased but rather shortened. Under the contract construction principle of "inclusio unius est exclusio alterius," we must conclude that if the contracting parties had intended to list a fourth condition precedent, i.e., additional equipment, they would have done so expressly. The Board declines the invitation to amend Rule 32 to include that condition under the guise of an interpretation.

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 21st day of April 2004.

