

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36997
Docket No. SG-36533
04-3-01-3-39

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)

STATEMENT OF CLAIM:

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

Claim on behalf of D. J. Zimmerman for payment of 2 hours and 40 minutes at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on or about December 21, 1999 Carrier allowed track forces to replace two defective rails without calling the Claimant to put the signals at their most restrictive aspect and bond the rails. The defective rails in question were at Mile Post 99.8 and Mile Post 95.8 on Track #2 on the Claimant's assigned district located in Tama, Iowa. Carrier's action deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1219336. General Chairman's File No. Nscope-023. BRS File Case No. 11488-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.

The Claimant in this dispute was regularly assigned as a Lead Signal Maintainer at Tama, Iowa. On January 8, 2000, the Organization presented a penalty claim on the Claimant's behalf alleging that:

"On Approximately December 21, 1999 Signal Operations Center (SOC) called Mr. Zimmerman to bond a pull-apart at MP 103.8 and MP 99.4 Track #1 Clinton Sub-Division. Mr. Zimmerman while checking the integrity of the track circuit also found two rails replaced by the Cedar Rapids, IA MOW Track Gang. Two defective rails were changed out at MP 99.8 and 95.8 Track #1 on the Tama IA territory. This is a violation of this current Signalmen's Agreement."

The claim as presented was denied on March 3, 2000, stating that no one was known by the Carrier to have performed any work as alluded to by the Organization. As the claim progressed through the on-property grievance procedures, it was pointed out by the Carrier that the claim as presented was vague and indefinite as to the actual date of occurrence or the specific work items involved. Eventually, on December 16, 2000, the Organization alleged that the claimed violation occurred "... on approximately December 18, 1999, section forces changed rail at MP 99.8 and 95.8"

At no time in this case record has the Organization identified with specificity when the complained of work was allegedly performed or what specific item of Signalman's work was allegedly performed or who allegedly performed it.

The Carrier's position throughout the handling of the case has steadfastly been that no Signalman's work was performed by anyone outside of the Signalman's craft and that none of the cited Rules of the Agreement had been violated.

The Carrier's position has not been shown to be incorrect. The Organization, whose responsibility it is to provide the specifics of a claimed Rule violation, failed to show that someone other than Signalmen performed signal work or that some signal work should have been performed by the Claimant and was not or even when such work was actually performed or should have been performed. "On or about" and "on approximately" are not specifics relative to the date of a claim.

With such a paucity of factual information and/or evidence, the Board has no recourse but to dismiss the claim for lack of proof.

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 18th day of May 2004.