

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37089
Docket No. MS-36693
04-3-01-3-197

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

(Thomas J. Yetmar

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an Ex Parte Submission within thirty(30) days covering an unadjusted dispute between M. L. Elsberry, D. D. Basile, M. A. Williams, L. C. Stearns, D. J. Eifealtdt, D. R. Haag, G. L. Voge, T. A. Baker, T. W. Jones, R. J. Fleagle, T. M. Nangle, T. J. Yetmar, W. E. Smith, D. A. Androy, J. W. Braden, R. E. Gillen, J. R. Ariel, L. Ferguson and the Union Pacific Railroad involving the questions:

All District Foremen currently working on the former Chicago and Northwestern Railroad should be compensated at a rate five (5) cents per hour more than the highest rated job that works directly for said District Signal Foremen retroactive to February 1, 2000 and continuing. Carrier has violated current Signalmen's Agreement, particularly Appendix A, the Implementation (sic) Agreement of January 1, 2000, and Section 3 of the August 7, 1941 Letter of Understanding when beginning on February 1, 2000 and continuing Carrier failed to compensate the District Signal Foreman at the appropriate rate. Carrier File No. 1225282, General Chairman's File No. Ndsf-050. BRS File Case No. 11558-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 Claimant argues that the parties entered into an agreement whereby District Signal Foremen would be compensated at the rate of not less than five cents an hour more than employees working under their supervision. According to the Claimant, these terms were agreed in a letter of understanding dated August 7, 1941 between G. F. Stephens of the C&NW Railroad and I. M. Fisher of the Brotherhood of Railroad Signalmen.

The Claimant offered rosters, pay scales, memoranda, and several letters that made general references to the stated letter of understanding. However, the record before the Board included neither the agreement nor excerpts from agreement language that would support the Claimant's allegation that the Carrier violated the agreement.

The Carrier insisted that the letter of August 7, 1941 was merely correspondence from the General Chairman requesting how the District Signal Foremen should be paid. The Carrier emphasized that the letter was neither signed nor acknowledged as an agreement by a Carrier official.

The Carrier maintains that Rule 50 of the C&NW Agreement specifically outlines the rate of pay to which a District Signal Foreman is entitled as of January 1, 1985. The Carrier made the additional point that several wage Agreements and adjustments have been made between the interested parties since 1941. None have utilized the formula suggested by the Claimant.

We have read and evaluated the entire body of evidence laid before us. We are unable to find any facts supportive of the Claimant's assertion that the parties reached an agreement whereby District Signal Foremen would be compensated in the manner alleged by the Claimant.

Form 1
Page 3

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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 21st day of July 2004.