

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37181
Docket No. SG-37960
04-3-03-3-383**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Amtrak (NRPC):

Claim on behalf of D. P. Spring and R. Farrell, for the abolishment of two Assistant Foremen positions and readvertising the two positions as Inspector Foremen positions, account Carrier violated the current Signalmen's Agreement, particularly Rule 4, when, on the advertisement sheet dated November 23, 1999, it abolished two established Inspector Foremen positions on the Metropolitan Trouble Desk and then readvertised the two positions as Assistant Foremen positions for the purposes of reducing pay and evading the application of the rules in the Agreement. Carrier's File No. NEC-BRS(S)-SD-856. General Chairman's File No. JY32106-102300. BRS File Case No. 12692-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.

The record reflects that in 1996, the Carrier upgraded Assistant Foreman positions on the Metropolitan Trouble Desk to Inspector Foreman positions because the function of authorizing the use of jumper cables to bypass malfunctioning circuits was added to the Trouble Desk. The instant claim alleges that the Carrier violated Rule 4 when it abolished two Inspector Foreman positions and re-advertised them as Assistant Foreman positions on November 23, 1999. Rule 4 prohibits the Carrier from discontinuing established positions and creating new ones for the purpose of reducing the rate of pay or evading the Agreement. However, the record reflects that at the time of the abolishment and re-advertisement, the Trouble Desk was no longer authorizing the use of jumper cables to bypass malfunctioning signals. There is no evidence that the Carrier abolished the Inspector Foreman positions and created Assistant Foreman positions for the purpose of reducing the rate or evading the Agreement. Furthermore, to the extent that the claim seeks an order that the Carrier abolish the Assistant Foreman positions and re-advertise Inspector Foreman positions, it seeks injunctive relief which is beyond the authority of the Board.

However, to the extent that the Claimants actually perform work of Inspector Foremen, as opposed to Assistant Foremen, they must be compensated at the Inspector Foreman's rate for the time spent performing Inspector Foreman's duties.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of September 2004.