

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37441
Docket No. SG-36512
05-3-00-3-744

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Springfield Terminal Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Springfield Terminal Railway Company (STRC):

Claim on behalf of Ms. Laura J. Holt for payment of the difference between the rate of pay of an Assistant Signalman and that of a Signalman, specifically, straight time pay for straight time hours and time and one-half pay for overtime hours. This claim begins on August 16, 1999 and continues for the term of the violation. Account Carrier violated the current Signalmen's Agreement, particularly Rule 35 and Article 2, when Carrier required the Claimant to perform work covered in the Signalmen's Classification and then failed to compensate her at the correct rate for doing so. Carrier File No. S-00-01. General Chairman's File No. BRS#AT-001-1999. BRS File Case No. 11466-STRC."

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 was at all material times herein employed by the Carrier as an Assistant Signalman on Crew No. 4153663 with headquarters in Waterville, Minnesota. At one or more points in time, none of the other members of the Claimant's crew possessed a Commercial Drivers' License (CDL). Because the Claimant did possess a CDL, she was assigned to drive the truck for her crew. She grieves the Carrier's decision to pay her at the Assistant Signalman rate for those times when she operated a truck.

The Organization's position is based on its review of Rule 35. The Organization contends that when an employee is assigned the "work" of a position, rather than being assigned to the "position," the employee is entitled to the higher rate of pay. The Carrier defends the claim by arguing that such a reading of Rule 35 is wrong. The Carrier asserts that the Claimant was not entitled to the higher rate because she was not assigned to the "position" of Signalman.

We find it unnecessary to resolve this issue. Assuming, arguendo, that the Organization is correct, it failed to meet its burden of proof. The record is devoid of any evidence as to the number of hours that the Claimant drove the truck. Under these circumstances, we are left with no choice except to deny the claim.

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, 2005.