

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37443  
Docket No. SG-37121  
05-3-02-3-80

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*  
( *Kansas City Southern Railroad*

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Chairman of the Brotherhood of the Kansas City Southern Railroad (KCS):**

Claim on behalf of R. H. Ware, Jr., for the pay differential between a sixth step Assistant Signalman and Signalman plus Skill Differential for all hours he has worked at the lower rate continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rule 29 and the 1996 National Agreement, Article VI, Section 1, and Article IX, Section 3, when it forced the Claimant to take a lower rated position beginning November 13, 2000, putting him in a worse position with respect to his compensation. Carrier File No. K06015435. General Chairman's File No. 01-011-KCS-185. BRS File Case No. 11900-KCS."

**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's driver's license was suspended due to a drunk driving conviction. The loss of his driver's license triggered the loss of his Commercial Driver's License. The Claimant's loss of his CDL led to his reassignment from a Signalman's position to an Assistant Signalman position with a corresponding reduction in pay.

The record reflects that the Organization's challenge to the Carrier's reassignment of the Claimant, including its claim of disparate treatment, has been considered and rejected by the Board in Third Division Award 36400. Thus, to the extent that the Organization renews that challenge, it again must be rejected. The record also reflects that the Organization contends that the Carrier violated the parties' February 7, 1965 Agreement as well as Rule 29. Those contentions are rejected. With regard to the former, the proper forum with jurisdiction over any such claim is not the Board, but rather Special Board of Adjustment No. 605. With regard to the latter, the record reflects that the Organization said nothing about a Rule 29 violation during the on-property handling other than making a reference to the Rule. Thus, its argument of an alleged Rule 29 violation is new and not properly before the Board.

**AWARD**

Claim dismissed.

**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.