

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37550
Docket No. SG-38010
05-3-03-3-442

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific:

Claim on behalf of R. G. Monroe, for 16 hours at his respective overtime rate of pay (8 hours for each day), account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 16, when on July 29 & 30, 2002, Carrier allowed a Relief Maintainer to perform work in the Livonia Yard instead of calling the Claimant who is assigned to work in the yard as an Interlocking Repairman, to perform the work. Carrier's actions deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1338775. General Chairman's File No. S-1, 16-336. BRS File Case No. 12764-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 in this case was regularly assigned to a position identified as Interlocking Repairman at Livonia Yard. On the claim dates, the Claimant was off duty observing his assigned rest days. Penalty claims were presented on his behalf by the Organization alleging that on each of the dates mentioned in the claim the Carrier used a Relief Maintainer to perform some unspecified work that should have been performed on an overtime basis by the Claimant. The Organization cited Rules 1 and 16 in support of its claim.

RULE 1 - SENIORITY CLASS ONE is a tabulation of position definitions which comprise Seniority Class One.

Paragraph "J" of this tabulation identifies the position of Interlocking Repairman as follows:

"J. Interlocking Repairman: An employee assigned to repairing and maintaining an interlocking plant on an assigned district. An employee assigned to maintain two or more power operated switches or derails will be considered as maintaining an interlocking plant."

Paragraph "L" of the tabulation identifies the position of Relief Signal Maintainer as follows:

"L. Relief Signal Maintainer: An employee headquartered on and assigned to the territory of a Manager Signal Maintenance but reporting to various Maintenance Foremen depending upon their assignment. A Relief Signal Maintainer will be used to cover a particular territory while a signal maintainer is on vacation, leave of absence, or similar circumstances. When not relieving a signal maintainer, such employee may be required to perform the duties of a regular signal maintainer and perform work without supervision, which may include FRA testing or normal signal maintenance work. Relief Signal Maintainer will not be used to eliminate any other positions."

RULE 16 - SUBJECT TO CALL, specifically paragraph "A" thereof which is referenced by the Organization as applicable in this case reads, in pertinent part, as follows:

"RULE 16 - SUBJECT TO CALL

- A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348."

At no time during the on-property handling of this case has the Organization identified the specific work that was allegedly performed by the Relief Maintainer and which should have been performed only by the Claimant.

From the case record as developed during the on-property handling, it is apparent that on each of the claim dates a regularly assigned Relief Maintainer who was on duty and under pay in the performance of his normal regular assigned duties was employed by the Carrier to perform normal Maintainer's work in Livonia Yard at the straight time rate of pay.

The Scope Rule of the applicable Rules Agreement includes as NOTE 1 thereto the following:

"NOTE 1 - It is understood that where "signalman" or "signal maintainer" is used in this agreement it includes all employees covered by paragraphs (h) to (p) of Rule 1."

For several reasons, the Organization's position in this case cannot be supported. First, there is no prohibition found in the Agreement Rules cited herein to preclude the Carrier's use of a Relief Maintainer to perform any Maintainer work. All of the work

involved in this case was performed by an employee covered by the Signalman's Scope Rule.

Secondly, there was no "possibility of emergencies in the operation of the railroad" identified or demonstrated by the Organization which would have triggered an application of Rule 16 on the claim dates. In fact, the Organization failed to identify what work was in fact performed by the Relief Maintainer.

Third, the Relief Maintainer in question was used to perform only Maintainer work during his assigned work period in his assigned work area. There was no overtime work performed by anyone, nor was there any need to call an employee on his rest days to perform Maintainer work on an overtime basis.

In short, the Organization failed to meet its burden of proving that a violation of the Rules Agreement has, in fact, occurred. The claim as presented is, therefore, denied.

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 20th day of July 2005.