

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37608
Docket No. SG-37593
05-3-02-3-713

The Third Division consisted of the regular members and in addition Referee Robert G. Richter 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 (UP).

Claim on behalf of M. S. Hudson, for seven hours and thirty minutes at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 1, when it required a signal maintainer to perform construction work that required an appreciable amount of his time and deprived the Claimant of the opportunity to perform this work on September 4 and 5, 2001, at MP 165.25 on the Clinton Subdivision in State Center, Iowa. Carrier's File No. 1287849. General Chairman's File No. N1k-235. BRS File Case No. 12271-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.

At the time this dispute arose the Claimant was assigned as a Signaller on Construction Gang No. 2085.

On September 4 and 5, 2001 the Carrier used one of its Signal Maintainers to remove and install a switch, underground cable and track wires on Track #1 house track switch at State Center, Iowa.

On September 16, 2001 the Organization filed this claim. It asserts that the Carrier violated paragraph k of Rule 1 when it used a Signal Maintainer to perform the work in question. The Rule reads as follows:

"Rule 1 - Seniority Class One

- k. **Signal Maintainer:** An employee assigned to perform work generally recognized as signal work on an assigned district. Signal maintainers with an assigned district will not be required to perform construction work requiring an appreciable amount of their time."

The Organization's argument is that the Claimant should have been used to do the work.

The Carrier responds by stating that nothing in Rule 1(k) restricts the work that can be assigned to a Signal Maintainer. Rule 1(k) may prohibit the Carrier from assigning construction work on an excessive basis, but it does not ban such assignment.

The parties reached an agreement which limits the amount of construction work that requires an "appreciable amount of their time." However, the term "appreciable time" is not defined.

The Board lacks the authority to change the Agreement. It is the Organization's burden to prove that the existing Agreement has been violated. It has not proven that Rule 1(k) was violated.

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 September 2005.