

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37632
Docket No. SG-37277
05-3-02-3-263**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 R. D. Hopson, for payment of the difference between the rates of pay of Assistant Foreman and that of Signalman commencing on the date assigned on Bulletin "Assgn0201", and continuing until this violation ceases, account Carrier violated the current Signalmen's Agreement, particularly Rules 56 and 80 when on January 12, 2001 it abolished the Claimant's position forcing him to displace on a lower rated position. Carrier's File No. 1263999. General Chairman's File No. N56 80-167. BRS File Case No. 11913-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.

Prior to January 12, 2001, Signal Gang No. 4032 was installing signal upgrades in Desplains and Maywood, Illinois. The gang was headquartered at Berkeley, Illinois. C. J. Bendowski was the Manager of Signal Construction who supervised the gang, which consisted of one Signal Foreman, two Assistant Foremen and two Signalmen.

On January 12, 2001, Signal Gang No. 4032 was abolished. A new gang, Signal Gang No. 4048, was established on January 12, 2001, with headquarters at Western Avenue in Chicago. Manager of Signal Construction C. J. Bendowski supervised this gang, which was made up of one Signal Foreman, one Assistant Foreman and three Signalmen.

The rate of pay of the Signalman classification is higher than the Assistant Signalmen's rate of pay.

The Organization filed a continuing claim on behalf of Signalman R. D. Hopson for the difference in pay between the Signalman classification and the Assistant Signalman classification. It is the Organization's position that the Carrier abolished all five positions on Signal Gang No. 4032 and, on the same bulletin, established five new positions on Signal Gang No. 4048 for the purpose of reducing the Signalmen's rate of pay in violation of Rule 56. The Organization stresses that the two Signal Gangs had the same hours, same rest days and the same Manager of Signal Construction. They also performed the same work on the Carrier's commuter operations, according to the Organization.

The Carrier denied the claim alleging that it did not abolish the positions on Signal Gang No. 4032 and establish new positions on Signal Gang No. 4048 "for the purpose of reducing the rate of pay or evading the application of the rules in this [Signalmen's] agreement." Rather, Signal Gang No. 4032 was abolished because the signal project on which they were working was completed. The Carrier maintains

that a new signal gang was established with a different headquarters to work on a different signal project.

It is noteworthy that the Claimant did not bid on the Assistant Foreman's position on Signal Gang No. 4048 even though he had more seniority than the employee who was assigned to this position. Rather, he exercised his seniority to a Signalmen's position on another gang. Therefore, even if Rule 56 had been violated as alleged by the Organization, the Claimant would not be entitled to the difference in the Signalmen's rate of pay and that of the Assistant Foreman's rate of pay because he never applied for the Assistant Foreman's position on Signal Gang No. 4048. The claim must be denied as a result.

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 19th day of October 2005.