

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37722
Docket No. SG-36887
06-3-01-3-419

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 Railroad Company:

Claim on behalf of G. M. Burns, D. R. Smith, K. L. Barnes, W. Sanders, and C. Uhlig for payment of 6 days pay each at the straight time rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 1(K), when Carrier required employees assigned to maintenance duties to install underground cable and perform associated work for a crossover at MP 33.01 on the Nevada Subdivision. This action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1239133. General Chairman's File No. W-1K-057. BRS File Case No. 11683-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.

During the period between June 19 and June 26, 2000, the Carrier assigned three Signal Maintainers, each of whom had an assigned district, and a Signal Inspector to bury approximately 500 feet of underground cable and wire two controllers for a crossover project. The Organization's assertion that the project had its own work order, No. 39355, was not challenged by the Carrier. The five Claimants seek payment for the time spent by the Signal Maintainers and the Signal Inspector for performing this "construction" work.

The claim is advanced as a violation of Rule 1(K) which reads as follows:

"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."
(Emphasis added)

The Carrier disputes the alleged violation of Rule 1(K) and notes that the text of the Rule does not explicitly grant exclusive construction work performance rights to signal gangs. In addition, the Rule recognizes that Signal Maintainers can be used to perform some construction work. The Carrier also asserted the claim to be excessive in that five Claimants were seeking pay for the work of four employees. In addition, the Carrier noted that Rule 1(K) is not applicable to the work performed by the Signal Inspector, who, by clear Agreement language in Rule 1(f) can perform any signal work. The Carrier also contended that the Organization had not satisfied its burden of proof to establish what constituted ". . . an appreciable amount of their time" within the meaning of the Rule.

The pivotal question posed by the claim is the intended meaning of the word "appreciable" as it is used in Rule 1(K). The word is an imprecise term that can cover a significant range of magnitude. As noted in Third Division Award 37608, the parties have not defined the scope of the term. Moreover, our careful review of

the record fails to disclose any bargaining history to reveal the intent of the negotiators who adopted the term.

In its Submission, the Organization cited a Webster's New Collegiate Dictionary definition of the term "appreciable" to the effect that it meant "... capable of being perceived or measured." If that definition applied to Rule 1(K) then arguably any quantity of work greater than, for examples, negligible, de minimis, or incidental amounts, would violate the Rule. The Carrier asserted, in its November 16, 2000 reply on the property, that Signal Maintainers "... perform the work in question on a regular basis." This assertion was never effectively refuted on the property. Thus, we must accept it as a proven fact. As such, it shows, at least on this record, that the parties' practice has given the term "appreciable" a more expansive scope than its ordinary and customary meaning. However, our careful review of the record shows that it fails to establish what the upper limit of that expanded scope is.

In claims of this kind, the Organization has the burden of proving the proper scope and operation of Rule 1(K). On this record, it failed to do so.

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 23rd day of February 2006.