

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37907
Docket No. SG-38252
06-3-04-3-158

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 Railroad:

Claim on behalf of Signal Maintainer R. K. Ward, for all lost overtime on February 5, 2003, account Carrier violated the current Signalmen's Agreement, particularly Rules 1, 16 and 80, when on February 5, 2003, Carrier called a Signal Maintenance Foreman to assist a Signal Maintainer in performing work involving overtime, instead of calling and using the Claimant who was ready, willing and able to perform the work, and who was also first alternate on the call list if the incumbent is unavailable. Carrier's File No. 1359743. General Chairman's File No. W-16-293. BRS File Case No. 12844-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 question to be decided in this case is whether the Carrier violated the Rules Agreement - specifically Rules 1 - SENIORITY CLASS ONE, 16 - SUBJECT TO CALL and 80 - LOSS OF EARNINGS - when on February 5, 2003, a Signal Maintainer Foreman was used to oversee the work and actions of a Signal Maintainer.

The Organization's penalty claim presented on behalf of the Claimant contends that he was ready, willing, and able to work with the other Signal Maintainer and, without delineating specifics, stated that the Signal Foreman did more than oversee the work of the Signal Maintainer. The penalty claim initially asked for reimbursement to the Claimant "for all lost time on February 5, 2003." The subject of the claim as presented to the Board asks "for all lost overtime on February 5, 2003."

The clear and un rebutted facts of this case show that the Signal Foreman, during his regular tour of duty on the date in question, did nothing more than function as a Foreman. The Signal Maintainer who was allegedly assisted by the Foreman performed service only during his regularly assigned tour of duty. The named Claimant in this case also worked his regular tour of duty on the claim date.

There is no evidence whatsoever to prove or otherwise indicate that any of the people involved in this case performed any overtime service on February 5, 2003.

There is no evidence or proof to show that anyone involved in this case was "called" under the provisions of Rule 16.

There is no evidence or proof that any of the work performed by the Signal Foreman would have or should have accrued to the Claimant.

There is no evidence or proof that the Claimant suffered any loss of earnings as that term is used in Rule 80.

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In short, there is no evidence or proof that any violation occurred on the date in question as alleged by the Organization. In the absence of evidence or proof of a violation of the Rules Agreement, the claim must be and is 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 22nd day of August 2006.