

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37912  
Docket No. SG-37514  
06-3-02-3-529

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 J. K. Chandler, for compensation at the Signalman’s rate of pay starting June 5, 2001, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 38, 40 (as amended), 41, 80 and the Implementing Agreement dated February 1, 2000, when it paid the Claimant at the Assistant Signalman’s rate of pay instead of the Signalman’s rate of pay, Carrier compounded this infraction by not giving any reason for its denial of the original Claim in violation of Rule 69. Carrier’s File No. 1276992. General Chairman’s File No. S-38, 40, 41, 80-173. BRS File Case No. 12375-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 above claim was filed by the Organization on behalf of the Claimant on July 13, 2001. The Organization alleged that the Carrier had violated various Rules of the parties' Agreement when it failed to pay the Claimant at the Signalman's rate of pay, but instead paid him at the Assistant Signalman's rate, despite the fact that he had attained two years' seniority in the Assistant Signalman's position.

Specifically, the Organization maintained that the Carrier violated the Amended letter to Rule 40, dated June 15, 2000, which reads in part:

**"Employees entering the service on and after the effective date of this agreement will establish a seniority date in Class 2 as of the date their pay starts. Employees will establish the same seniority date in Class 1 once they have completed the training program or achieve two (2) years of service."**

The Organization contends that all other employees in the Signal Department who had achieved two years of service were receiving the Signalman's rate, except for the Claimant. The Organization further asserted that the fact that the Carrier had not sent him to the Training Program in time for him to complete it within his first two years of service did not exonerate the Carrier from paying him the Signalman's rate according to the Agreement. By letter of September 6, 2001, the Carrier denied the claim. It disputed the fact that the Agreement had been violated, and contended that the Organization had not met its burden of proof to substantiate its claim.

The Carrier did not dispute either that the Claimant had two years of service at the time that the claim was filed, or that the Amendment to Rule 40 actually granted employees entering service with two years of service or achieving two years of service entitlement to receive Signalmen wages. Nor did the Carrier argue that the language of Rule 40 meant that the Claimant was not entitled to Signalman's pay until he completed the Training Program.

In light of the foregoing, we find that the Organization met its burden of "going forward" in this matter, but the Carrier did not in turn respond with sufficient evidence to counter the Organization's position. Accordingly, the claim is sustained. The Claimant shall be recompensed for the difference between the wages he was receiving as an Assistant Signalman and Signalman's pay from June 5, 2001 forward.

**AWARD**

**Claim sustained.**

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 22nd day of August 2006.**