

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37970
Docket No. SG-37340
06-3-02-3-343

The Third Division consisted of the regular members and in addition Referee John R. Binau 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. Huber, for three hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Rule 16, when it failed to call the Claimant to inspect the crossing at Main Street in Conway, AR, MP 373.1, on April 2, 2001, and instead used a train crew to inspect the crossing, denying the Claimant the opportunity to perform this work. Carrier's File No. 1265371. General Chairman's File No. S-SR-16-148. BRS File Case No. 12014-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 Claimant was assigned to the position of Signal Maintainer in the Conway, Arizona, area. On April 2, 2001, at 3:51 A.M., a remote monitor, known as an HCA, indicated that two or more lights were out at a grade crossing in Conway. The Carrier did not call the Claimant out to repair the signal on overtime. It made the decision that repairs could wait until the Claimant came on duty a few hours later. When the Claimant came on duty, he responded to the reported problem and made the necessary repair by changing a light bulb. Between the time the HCA indicated lights were out and the time the Claimant made the repairs, one train passed through the crossing. The train crew confirmed that the light was out.

It was the Organization's position that the Carrier should have called the Claimant immediately after the HCA reported two or more lights were out. It contended that the Carrier violated the Scope Agreement when it allowed a train crew to inspect the crossing rather than calling the Claimant. The Organization cited a Union Pacific Operations Procedure to support its position that the Claimant should have been called immediately under Rule 16 of the Agreement.

The Carrier stated that the Agreement provisions cited by the Organization do not require the Carrier to pay the Claimant for an overtime call when it determined that it was not necessary to call a signal employee outside of his regular hours. The Carrier argued that the Scope Rule was not violated because no signal work was performed prior to the Claimant changing a light bulb. The Carrier stated the fact that a train crew was asked to confirm that lights were out was incidental to their duties and did not violate the Scope Rule. The Carrier noted that train crews are required to observe lights at every crossing and are required to report if lights are not lit. The Carrier argued that simply confirming whether a light turns on or not is not the sort of inspection referred to in the Scope Rule. It was still the Claimant who made the official inspection and it was the Claimant who made the repair.

The Carrier further stated that Rule 16 did not address the claim at hand. It noted that Rule 16 addresses which employee is entitled to be called if the Carrier determines that an emergency exists that requires a call. The Rule does not

determine what situations constitute an emergency. The Carrier concluded that it did not bypass the Claimant for an emergency call but instead made the decision that the matter was not so urgent that it was necessary to call the Claimant after hours.

During oral argument, the Carrier Member cited Third Division Awards 37530 and 37531 in support of the Carrier's position. . . . After considering all the evidence, the Board agrees with the findings of Award 37531 wherein the Board held:

"Absent a specific Rule to the contrary, it is management's prerogative to determine when work is to be performed. In the instant case, Signal Operations Center personnel determined that bonding at the pull apart at MP 488.27 did not have to be replaced immediately. That determination did not violate Rule 16A.

Rule 16A provides that unless registered absent, the regular assignee will be called for an emergency if he/she is available for service under the Hours of Service Act. Rule 16A was inapposite to this dispute because no signal employee was called out on January 31, 2000, to replace the signal bond at the pull apart at MP 488.27. Rather, the Carrier determined that this situation did not involve an emergency and that the bonding could be performed the following day during regular work hours. As noted above, it was the Carrier's prerogative to make that decision.

The Organization maintains that the Carrier's decision to wait until the next day to bond the pull apart violated the Carrier's own Rules regarding emergency track work as well as Federal Railroad Administration (FRA) Rules and regulations. In fact, according to the Organization, the FRA issued a Code 1 violation because of this incident.

Whether or not the Carrier's decision not to immediately bond the pull apart at MP 488.27 on January 31, 2000, violated the Carrier's Rules regarding emergency track work and /or FRA Rules and

Regulations is beyond the jurisdiction of the Board. And in any event, even if the Carrier's Rule regarding emergency track work or FRA Rules and Regulations were violated this, by itself, would not constitute a violation of Rule 16A of the Agreement. Accordingly, the claim must be denied."

As in the above case, the Carrier Rule cited in the Organization's exhibits is not part of the Agreement. The Board also agrees that the Scope Rule was not violated in this case. There are no Agreement Rules prohibiting train crews from observing the condition of crossing lights as part of their duties. The Carrier did not violate the Agreement when it chose not to repair the crossing light on an emergency basis.

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 25th day of October 2006.