

****CORRECTED****

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40349
Docket No. SG-39388
10-3-NRAB-00003-060035
(06-3-35)**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 J. Koran, Jr., for three hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 16, when it failed to call the Claimant on his assigned territory to test road crossings on October 5, 2004, and instead called another employee, causing the Claimant to miss a work opportunity. Carrier’s File No. 1415154. General Chairman’s File No. UPGCW-16-1065. BRS File Case No. 13445-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.

At the time this dispute arose, Claimant J. Koran, Jr. was assigned to the position of Signal Maintainer with headquarters at Pomona, California. On October 4, 2004, the Carrier assigned D. K. Clayton, to test and inspect road crossings due to runaway lumber cars. Clayton is junior to Koran. On November 29, 2004, the Organization submitted a claim on behalf of the Claimant in the amount of three hours overtime pay. The Organization alleged that the work in question was work routinely performed by the Claimant, that he was available for overtime work, and that he should have been called in lieu of Clayton.

The Carrier denied the claim on January 4, 2005. In response to the Organization's allegations, the Carrier noted that the work in question required a download from the Model 3000 GCP, for which there was no Technician available. It pointed out that the Manager of Signal Maintenance sent Clayton, a Signal Inspector, to do the work, because he had the equipment and the knowledge to complete the work at issue.

In its February 9, 2005 appeal of the Carrier's denial, the Organization pointed out that the Parties' Agreement specifies that the "regular assignee" should be called for such work, "except when unavailable." It also protested that the task of downloading from the Model 3000 GCP was a "menial task" and could be performed by any Signalman if he or she were provided with the proper equipment – and that it was the Carrier's responsibility to provide employees with the proper tools and equipment.

The Carrier responded to the Organization's appeal on April 18, 2005. In that response it noted that the work in dispute – downloading data from the Model 3000 GCP – requires a laptop and specialized software. It also contended that such work is normally performed by Signal Technicians, and is not reserved to Signal Maintainers. It insisted that because there was no Signal Technician available, the Manager of Signal Maintenance properly called out Signal Inspector Clayton, who had the experience, expertise and equipment required for performing the data

download. The claim was conferenced on the property on August 18, 2005 and remained unresolved. Accordingly, it is properly before the Board.

The Board carefully reviewed the documentary evidence and correspondence in the case at hand. We note that the Organization has the burden of showing by a preponderance of the evidence that the work at issue was properly reserved to Signal Maintainers – and in this instance to the Claimant. We do not find that the Organization has met that burden. The Carrier argued persuasively that the work of downloading information from the Model 3000 GCP required a laptop and specialized software, neither of which the Claimant had in his possession. Further, the Organization failed to prove that the Claimant had the expertise to complete such a task or, indeed, had ever performed the task. In this instance, the Carrier has shown without meaningful contradiction that the work at issue is normally performed by Signal Technicians; but with no Signal Technician available, the Carrier assigned a Signal Inspector who was qualified and possessed the necessary equipment to perform the work needed.

In light of the foregoing, we find no basis for sustaining the claim.

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 1st day of March 2010.