

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40478
Docket No. SG-40077
10-3-NRAB-00003-070306
(07-3-306)**

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:

Claim on behalf of C. A. Borron, R. O. Clanton, S. D. Edge, W. A. Goforth, T. W. Hardy, S. D. Jolley, J. E. Myers and T. J. Nelson, for compensation as required by Appendix O, Side Letter 9 in addition to all the provisions of Rule 36 and made whole for any and all losses incurred as a result of this violation continuing until Carrier provides the Claimants with proper abolishment notices, account Carrier violated the current Signalmen’s Agreement, particularly Appendix O, Section 2, and Rules 56 and 58, when on March 28, 2006, Carrier sent abolishment notices to the Claimants abolishing their positions on Gang 2663 effective end of shift April 13, 2006, without providing the required 30-day notice under the provisions of Appendix O and then failed to allow the Claimants to return to the reestablished positions. Carrier’s File No. 1448389. General Chairman’s File No. UPGCW-RP-1234. BRS File Case No. 13744-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 event precipitating this claim was the Carrier's notification to the above-referenced Claimants on March 28, that as of April 13, 2006 their positions on Gang 2663 would be abolished. The Organization filed a claim on behalf of the Claimants on May 4, 2006. In that claim the Organization contended that the Carrier had violated Appendix "O", Section 2 of the Parties' negotiated Agreement, because it did not give the Claimants 30 days' notice of the Signal Gang's abolishment and then created identical positions. The Organization demanded that the Carrier compensate each employee whose position was abolished until such time as it issues the required 30-day notice.

The Carrier denied the claim by letter of June 27, 2006. In that letter, the Carrier denied that it had in any way violated the Agreement between the Parties. Specifically, the Carrier insisted, Gang No. 2663 was not a "Camp Car" gang. Moreover, it pointed out, all employees assigned to Gang No. 2663 had exercised their seniority and bid onto and were subsequently assigned to Zone Gang No. 2663 under Rule 36 of the Agreement. Thus, the Carrier insisted, the provisions of Appendix O do not apply to Zone Gang No. 2663. Rather, under Rule 57, the Carrier was required to give the employees at issue not less than five working days' notice, and it did so. Finally, the Carrier asserted that the Organization had offered no proof that the positions and gang abolished were identical to the positions subsequently created.

The Organization appealed the Carrier's denial of its claim and that appeal was denied. The matter was then progressed on the property, up to and including conference on the property on December 6, 2006, after which it remained unresolved. It is properly before the Board for adjudication.

The Board notes that a prior Award involving these same parties – and this same gang – determined that Gang No. 2663 was not, as the Organization alleges a “Camp Car” gang. In Public Law Board No. 6457, Award 27, Referee Margo Newman found as follows:

“It is difficult to accept the Organization’s argument that SG 2663 continued as a Camp Car Gang, despite not being headquartered in camp cars or mobile units because it was not properly abolished under the language of Appendix O, Section 2(a). That provision relates specifically to the conversion of camp car or mobile unit headquartered gangs to fixed headquartered gangs by July 1, 1973, referenced in Section 1, and the requirement of abolishment notices in Section 2 is prefaced by the phrase ‘in implementing the initial changes.’ A reading of those provisions together leads to the conclusion that the abolishment notice required for changing signal gang headquarters from camp car or mobile unit to fixed headquartered gangs related primarily to the situation where Carrier was required to convert enough of those Camp Car gangs to fixed headquartered gangs so that there would be no more than nine system gangs with mobile headquarters by July 1, 1973. A fair reading of the plain language of those sections of Appendix O does not support the Organization’s assertion that SG 2663 remained a Camp Car gang beyond the point at which it was headquartered in camp cars or bulletined as a Zone gang.”

In light of that finding, the only remaining question is whether, after abolishing the positions at issue, the Carrier violated Rule 56, which reads as follows:

“Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules in this agreement.”

A review of the record indicates that the Organization failed to prove that the Carrier in any way violated the provision of Rule 56. The Carrier asserted that the established Gang 8254 is a completely different gang from Gang 2663 and the gang

consist is different. Moreover, there is no evidence that any rates of pay were reduced. Accordingly, we find that the Carrier did not violate any provision of the existing Agreement. Accordingly, the claim is denied in its entirety.

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 14th day of May 2010.