

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40644
Docket No. SG-41030
10-3-NRAB-00003-090400**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of K. M. Miller, for three and one-half hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 (Scope) and Rule 2 (Classifications), when it used signal technicians instead of the Claimant to install a power generator at CP202 on October 3, 2007, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. BRS(S)-SD-1113. General Chairman’s File No. AEGC-106-01-1007. BRS File Case No. 14170-NRPC(S).”

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 is a Signal Maintainer. The Organization alleges that the Carrier violated Rule 1 (Scope) and Rule 2 (Classifications) when on October 3, 2007, the Carrier utilized Signal Technicians Chaney and Elrod to install a power generator at CP 202. The Organization, in its initial claim, alleges that the Claimant was qualified as a Signal Foreman whose position had been abolished and, thereafter, the Carrier permitted Signal Technicians to work past their advertised 7:00 A.M. to 3:00 P.M. shift into overtime from 3:00 P.M. to 6:30 P.M. without supervision. The claim requests the three and one-half hours' pay for denying the Claimant his rights to perform the installation.

The Carrier argued that it properly complied with Rule 1 when it assigned Signal Department employees to install the power generator. Further, when the time required exceeded the regularly assigned hours, it complied with Rule B-3 "Overtime Preference - Continuous With Tour of Duty" and permitted both Signal Technicians Chaney and Elrod to continue the work. The Carrier denies that the Claimant had any right to the overtime grieved. Further, the Carrier contends that there is no right of Signal Maintainers to perform the work under the Agreement language and practice and, in fact, Signal Maintainers would not have performed the work because the power generator had to be tied into the signal power case. It lastly disputes as a fatal procedural flaw the Organization's argument of a Rule 4 violation.

Rule 4 of the Agreement states that "Established positions shall 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." The initial claim alludes to the Carrier maintaining positions, but does not mention Rule 4 and the Board finds it improper. Even if, arguendo, the Rule was procedurally appropriate, the abolishment evidence of record does not support a violation. No proof exists that a Signal Technician could not perform the work without supervision from a Signal Foreman, or that Signal Technician positions were created to replace the Claimant's abolished Signal Foreman position.

As for the alleged violations of Rules 1 and 2, the Organization has not shown that the installation of a power generator by Signal Technicians violates the Scope or Classification Rules of the Agreement. While the Organization argues that the disputed work has customarily and historically been performed by Signal Maintainers, there is no proof in this record to support this argument. Signal Technicians Chaney and Elrod obviously had the skills to perform the assignment. The Board notes that there is no claim against the first eight hours of work, only the unsupervised overtime. The Organization points to the fact that the installation of a generator is not listed as a duty performed by Signal Technicians. While that point is true, the Board finds no proof that Signal Technicians are precluded from doing the work by Agreement or that ipso facto, failure to list it in the Signal Technician Scope and Classification must, therefore, make it belong to Signal Maintainers.

The Board finds no probative evidence; no documents or statements contending that the work belongs exclusively to Signal Maintainers, or that it is normally performed by them. There is no proof that Signal Maintainers had the right to perform the work and that Signal Technicians did not and that the use of Signal Technicians herein violated the Agreement. The claim must be 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 27th day of August 2010.