

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40841
Docket No. SG-40669
11-3-NRAB-00003-080542**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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. A. Rocha, for 24 hours differential between his rate of pay and that of a Electronic Technician, account Carrier violated the current Signalmen’s Agreement, particularly Rule 21, when it required the Claimant to fill a higher rated position and then failed to compensate him at the higher rate of pay on April 2, 3 and 4, 2007. Carrier’s File No. 1477025. General Chairman’s File No. S-21-869. BRS File Case No. 14062-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.

This claim protests the Carrier's refusal to pay the Claimant, a Signal Interlocker Repairman (SIR) the pay rate of Electronic Technician (ET) for allegedly filling in for the ET when he was attending training on the claim dates. Both employees worked in the Pine Bluff gravity yard. **RULE 21 - FILLING HIGHER RATED POSITION** provides:

"When an employee is required to fill the place of another employee receiving a higher rate of pay, he will receive the higher rate, but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

The Organization argues that the Claimant was required to fill in for the ET when he was in Rules training, in the same manner as SIR Lawson was when the ET was on vacation, and for which he received the higher pay rate. It asserts that the Claimant performed the functions of monitoring the computer for trouble calls in the hump turn-in yard, and submitting the summary report at the end of the day, which are functions normally done by the ET, and is entitled to the higher pay rate under the clear language of Rule 21, which must be applied as written, citing Third Division Awards 12632, 16573, 19695 and 20687. The Organization notes that the fact that Lawson received the higher rate is relevant to the Claimant's entitlement to such when the ET was unavailable in training and establishes a past practice on the property which the Carrier must abide by, relying on Third Division Awards 13229, 28214 and 31424.

The Carrier contends that the Claimant was not required to fill the ET position on the claim dates, and he did not perform any duties that are exclusive to the ET position. It notes that all employees monitor the computer and the summary report is a call to Omaha indicating the number of cars humped in the yard, a routine function not requiring the expertise of an ET. The Carrier also asserts that the fact that the position was relieved, when the ET was on vacation, is irrelevant in this case, pointing to the Manager's written statement making clear that the Claimant was never given any instruction to fill in for the ET, who was available for call when in training, unlike the situation when the ET was on vacation. The Carrier argues that the Organization failed to meet its burden of proving that the Claimant was required to fill in the place of the ET or perform the type of core functions done by that classification as set forth in Rule 1, or that it violated the

Agreement by failing to pay him the higher pay rate on those dates. See Third Division Awards 31082, 26033, 27851 and 27895.

A careful review of the record convinces the Board that the Organization has not met its burden of proving a violation of Rule 21 in this case. The only evidence submitted by the Organization was the written statement of the Claimant that he “would have to monitor computer help with trouble calls from the hump. Turn in yard summary report at the end of the day,” and the statement of Lawson that he received the higher rate when filling in for the ET when he was on vacation. It did not refute the Manager’s statement that the Claimant did not repair, test or maintain any electronic equipment, which are the core duties of an ET set forth in Rule 1 (l) and that he was not instructed to fill in for the ET when he was at training and available. In the absence of sufficient proof that the Claimant actually performed the functions of an ET on the claim dates, or that the Carrier determined that he was required to fill in for the ET at that time, the Organization failed to establish the Claimant’s entitlement to the higher wage rate under Rule 21.

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 11th day of January 2011.