

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24434
Docket Number SG-24508

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Akron, Canton and Youngstown Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Akron, Canton and Youngstown Railroad Company that:

(a) The Carrier is continuing to violate the rules of the Signalmen's Agreement effective July 1, 1971, establishing the position of Signals and Communications Maintenance Foreman. On numerous occasions we have requested the Carrier to fill the position of Signals and Communications Maintenance Foreman, but instead the Carrier is continuing to instruct Mr. H. C. Bell, Assistant Division Engineer-S&C, and other S&C supervisors to perform the Signals and Communications Maintenance Foreman's duties.

(b) The Carrier now pay Mr. Tong and Mr. Bell in addition to their hourly S&C maintainers' rates of pay, the Signals and Communications Maintenance Foreman rate of pay beginning sixty (60) days prior to the filing date of this claim.

(c) This claim is also being filed in accordance with Article 7, Rule 701 (e), of the Signalmen's Agreement effective June 15, 1955."

OPINION OF BOARD: By letter dated August 23, 1980 the Organization filed claim under Article 7, Rule 701(e) of current general Agreement dated July 15, 1955 to the effect that Carrier was in violation of special Agreement dated July 1, 1971 (and amended February 15, 1974) which established and retained the position of Signals and Communications Maintenance Foreman. A fortiori to this claim Organization requested compensation adjustment for Signalmen Tong and Bell.

An analysis of the record before the Board clearly shows that there is a special Agreement in force between the parties which states that the position of Signal and Communications Maintenance Foreman be established and retained. No citing by Carrier of general Rules (405, 406 sqq.) nullifies such special Agreement. This Board has ruled on numerous occasions that special Rules negotiated between parties have priority over general Rules (Third Division 1077 inter alia). Nor does the citing by the Carrier of adverse business conditions at a given point in time, nor of employees' failure to bid on the position abolish the position. Only the parties can abolish the position by means of negotiations. For this Board to rule otherwise would place it far beyond its jurisdictional authority which is limited to the interpretation of collective bargaining contracts (Third Division Awards 6695, 21697 inter alia). With respect to part (a) of Organization's state-

ment of claim it is the decision of this Board that the Carrier had no contractual right to "abolish" this position, to use Carrier's language in its ex parte submission to this Board; the Board further rules that Carrier bulletin the position of Signal and Communications Maintenance Foreman in accordance with special Rules Agreement effective July 1, 1971 as amended February 15, 1974 until and unless this position be contractually abolished by means of collective bargaining negotiations.

With respect to part (b) of Organization's statement of claim this Board rules, however, under the doctrine of equitable estoppel, that the Carrier is not to be held liable for post facto monetary claim nor is it to be penalized retroactively for unchallenged interpretation to Rules (Third Division Awards 15827, 22148 inter alia).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the contract was violated as herein indicated.

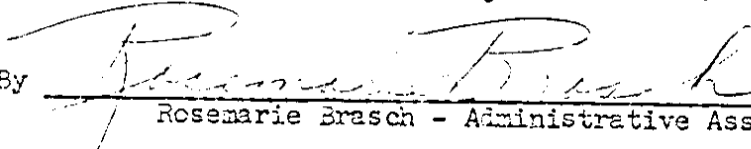
A W A R D

Claim (a), sustained.

Claim (b), denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.