

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24957
Docket Number SG-25044

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Railroad Company:

That R. J. Hays, check number 1013, be paid the difference between his pro rata rate of pay of Leading Signalman and that of Assistant Foreman for all time worked by him since January 15, 1982 while wrongfully denied the position and rate of Assistant Foreman. [General Chairman file: U-087]

OPINION OF BOARD: This dispute arose after the Carrier abolished the position of Assistant Foreman held by the Claimant and advertised a Leading Signalman position which was then awarded to him. The Organization contends that as a Leading Signalman, the Claimant continued to perform Assistant Foreman duties after his position was abolished on January 15, 1982. Accordingly, the Organization seeks the difference between the rates of pay of Assistant Foreman and Leading Signalman since January 15, 1982.

Except for the bare assertion that the Claimant has continued to perform the work of Assistant Foreman, there is no evidence in the record to indicate that as a Leading Signalman the Claimant performed the duties of an Assistant Foreman or was assigned by the Carrier to perform the duties of Assistant Foreman since January 15, 1982. Between January 15, 1982 and March 30, 1982, the Claimant was one (1) of three Leading Signalmen on a Construction Gang, under the supervision of Foreman Brown. Each Leading Signalman had his own individual assignment. Pursuant to a bid on March 30, 1982, the Claimant was awarded the position of Leading Signalman in the North Division. Since that time, the Claimant has performed preventive maintenance and has generally worked alone. Therefore, he could not have supervised other employees.

The Organization has the burden of proving that the Claimant has actually performed the duties of an Assistant Foreman since January 15, 1982. Based upon the record, the Board concludes that the Organization has failed to satisfy its burden. Accordingly, the Carrier did not violate Rule 13 (d) of the Agreement which provides as follows:

"An established position shall not be discontinued and a new one created under a different title covering relatively the same class or volume of work for the purpose of reducing the rate of pay or evading the application of the rules of this Agreement."

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 Employes involved in this dispute are respectively Carrier and Employes 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

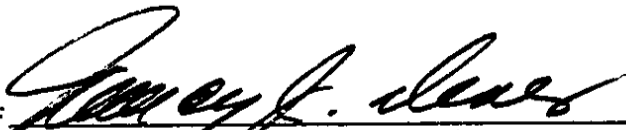
That the Agreement was not violated.

A W A R D

Claim denied.

: NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

