

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29771
Docket No. SG-29581
93-3-90-3-537

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of Mr. Vince Kalen, employee #752609, Headquartered at Wayne, Michigan. Territory mile post 7.4 to mile post 23 main line.

- A) On the following days Mr. Kalen performed test 22c with Mr. T.L. Campbell. On 3/20/89, 3/21/89, 3/22/89, 3/23/89, 3/28/89, for a total of 40 hours.
- B) This is a violation of verbal agreement between Asst. General Chairman D. Boston and yourself, made at the meeting of April 7, 1989. As Mr. Kalen was not paid Inspectors rate for this work.
- C) I now request you pay Mr. Kalen the rate difference for the 40 hours." Carrier file SG-175. BRS Case No. 8041-CR.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

On March 20, 21, 22, 23 and 28, 1989, the Carrier assigned two Signal Maintainers to perform the comprehensive annual test [Test No. 22(c)] on various grade crossing protection devices throughout a sixteen-mile long territory. Claimant was the senior of the two Maintainers. Claimant was compensated at his regular Maintainer rate for the forty hours of work he performed but now contends that he is entitled to an additional sum, that is, the difference between his regular rate of pay and the higher pay rate of a Signal Inspector.

The Organization charges that the Carrier breached a verbal agreement reached between the Organization and the Carrier that Test No. 22(c) would be conducted by an Inspector assisted by a Maintainer or, if two Maintainers performed the test, the senior Maintainer would be paid at the Inspectors' rate.

After reviewing the record, this Board does not find sufficient evidence proving the existence of an oral understanding between the Parties. While this Board recognizes that oral agreements are enforceable under the Railway Labor Act, the proponent of an oral agreement must first prove the terms of the verbal agreement before it can be enforced. It is inherently difficult to prove up the terms of an oral agreement especially when the opposing party denies the existence of such an agreement.

In this case, other than the alleged date of the verbal agreement (April 7, 1989) which the Board notes was subsequent to the claim dates, the Organization has not presented evidence describing the exact terms of the oral agreement. The Carrier refuted the existence of an oral understanding and asserted that the statements made on April 7, 1989, by the Organization, were taken out of context.

Absent proof of an oral agreement modifying the schedule agreement, the two employees herein, including Claimant, were fully qualified to conduct the test per Appendix E. Nothing in the applicable rules provides that one Maintainer receives the Inspectors' rate of pay when two Maintainers conduct Test No. 22(c) without an Inspector.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.