

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31636  
Docket No. SG-31488  
96-3-93-3-501**

**The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(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 K. E. Smith for payment of three hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and Appendix 'P', when it utilized management employees on February 25, 1992, to perform work covered under the Signalmen's Agreement and deprived the Claimant of the opportunity to perform this work. Carrier's File No. SG-496. General Chairman's File RM2338-48-992. BRS File Case No. 9134-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 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 waived right of appearance at hearing thereon.**

**The Organization summarizes the claim as follows:**

**"The dispute developed following Carrier's use of two management employees to perform troubleshooting and repair work on the signal**

system on February 25, 1992. When problems developed on that date with a motor generator located at milepost 1.95 on Carrier's Port Road Branch, Carrier used a Supervisor and an Assistant Supervisor to respond to the trouble call. The two management employees traveled to the affected location and restored the system to proper operation."

As a result, the Organization initiated a Claim on behalf of a Signal Maintainer, whom the Organization contends should have been called to work for this purpose. While the Carrier raises many defenses as to its action, there is no contradiction to the account of what occurred, as quoted above.

The Board can find no justification for the failure to call a Signal Maintainer or other represented employee for work which on the face of it is covered by the Scope clause. The Board finds no merit in the various arguments raised by the Carrier, which are paraphrased as follows:

Until the latter stages of the claim handling, the Organization failed to cite an Agreement provision which was allegedly violated. The Carrier was aware from the outset that the Organization was claiming that supervisory employees were performing a task which should be assigned to a Signal Maintainer. There is no confusion caused by the absence of a specific Rule citation.

The claim lacked "accurate and specific information". All concerned knew exactly what happened.

The Employees "altered their claim on appeal to the Board". The Organization seeks an appropriate monetary remedy because Supervisors performed work which should have been assigned to a Signal Maintainer. This was consistent and hardly a significant alteration.

The Employees "failed to meet their burden of proving that the disputed work accrues exclusively to the signalman craft." This is not a dispute as to which craft or classification would be properly assigned. In a challenge to work by supervisory employees, no exclusivity showing is required. Further, as argued by the Organization, this argument was not raised on the property and requires no consideration here.

The Claimant was not qualified because the machine involved had just been acquired. This stand hardly comports with the Carrier's assertion that the supervisors' work was simply "pushing a button, throwing a switch, and observing the normal operation of the motor generator". If there were doubts as to a Signal Maintainer being

able to perform the task, there is no reason that such employee could not be accompanied by a supervisor.

"The minimal nature of the work constituted a de minimis occurrence." Whether the work took five minutes or five hours, what was involved was a call-in to work.

Under all these circumstances, the claim is sustained. As to appropriate remedy, the Claimant shall receive the minimum number of hours' pay as provided for a call-in. If no such minimum is specified, then the Claimant shall receive three hours' pay, since this amount was not challenged on the property. In keeping with the usual or possibly predominant practice on this property, the pay shall be at the straight-time rate, since the Claimant was not required to perform the work.

### AWARD

Claim sustained in accordance with the Findings.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 29th day of August 1996.**