

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31778
Docket No. SG-31602
96-3-93-3-607**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(CSX Transportation Company (former
(Atlanta and West Point Railroad)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (A&WP):

Claim on behalf of F.S. Eddings, Jr. for payment of the difference in pay between his protected rate of Signal Foreman and the rate of Signal Maintainer following the abolishment of the Claimant's Foreman position on July 9, 1992, account Carrier violated the current Signalmen's Agreement, particularly Article VII of the National Agreement of June 4, 1991, when it refused to implement the terms of the 1991 Agreement after it placed the Claimant in a worse position with respect to his rate of pay. Carrier's File No. 15(92-59). General Chairman's File No. FL-92-2S. BRS File Case No. 9142-AWP."

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 or 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 involves an application of the protective provisions of the National Agreement of February 7, 1965, as amended by the provisions of Article VII of the National Agreement dated June 4, 1991. There is no disagreement between the parties relative to the fact situation which exists in this dispute.

The Organization insists that the 1991 amendments to the 1965 Employee Protection Agreement support the claim as made. It argues that this dispute involves an interpretation of the 1991 Agreement and that this Board has jurisdiction to interpret the 1991 Agreement.

The Carrier contends that the 1991 amendments to the 1965 Employee Protection Agreement have been complied with as they apply to the Claimant and that, in any event, this Board lacks jurisdiction to interpret any of the provisions of the 1965 Agreement in any form including the 1991 amendments thereto.

There is no question but that Article VII of the June 4, 1991 Agreement did, in fact, make revisions in the provisions of certain portions of the February 7, 1965 Agreement. The language of Article VII of the June 4, 1991 Agreement is clear and explicit. It reads as follows:

"ARTICLE VII - PROTECTED EMPLOYEES

(a) Article I, Section 1 of the February 7, 1965 Agreement shall be amended to read as follows:

'Section 1 - All employees, other than seasonal employees, who were in active service as of the date of this Agreement or who subsequently return to active service and who had ten (10) or more years' employment relationship as of the date of this Agreement will be retained in service subject to compensation as herein provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. For the purpose of this Agreement, the term "active service" is defined to include all employees working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not the date of this Agreement was a work day).'

(b) Article I, Section 2, of the February 7, 1965 Agreement shall be amended to read as follows:

'Section 2 - Seasonal employees, who had compensated service during each of the years 1988, 1989 and 1990 who otherwise meet the definition of "protected" employees under Section 1 will be offered employment in future years at least equivalent to what they performed in 1990, unless or until retired, discharged for cause, or otherwise removed by natural attrition.'

(c) Article V, paragraph 2, shall be amended to change the reference of a four hundred dollar (\$400) transfer allowance to eight hundred dollars (\$800)."

For this Board to render a decision on the merits of this dispute would require that we make an interpretation of the provisions of the February 7, 1965 Agreement, as amended. Clearly, such authority is not vested with this Board which has consistently refused to accept jurisdiction in situations which are subject to explicit dispute resolution procedures of other negotiated agreements such as the February 7, 1965 Agreement. Some of the many decisions in this regard are Third Division Awards 28219, 27103, 27100, 26006 and 23043. Therefore, this claim is dismissed for lack of jurisdiction.

AWARD

Claim dismissed.

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 20th day of November 1996.