

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31904
Docket No. SG-31017
97-3-92-3-902**

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Norfolk Southern Railroad (Norfolk & Western)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Railroad (Norfolk & Western):

Claim on behalf of S. E. Clark for payment of the difference in pay between his protected rate of Signal Foreman and the rate of Signal Test Man following the abolishment of the Claimant's Foreman position on October 11, 1991, account Carrier violated the current Signalmen's Agreement, particularly Article VII of the National Agreement of June 4, 1991, when it placed the Claimant in a worse position with respect to his rate of pay. Carrier File No. NA-91-BRS. General Chairman's File No. 55/920213A. BRS Case No. 8855-N&W."

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 Carrier's contention that this Board lacks jurisdiction to decide the merits of this dispute because it involves a question of entitlement to protective benefits under the February 7, 1965 (Job Stabilization) Agreement is without merit.

In anticipation of the merger of the Carrier and the Nickel Plate Railroad, as well as the Carrier gaining control of the Wabash Railroad and several other smaller railroads, a protective agreement was entered into on January 10, 1962. Subsequently, the Mediation Agreement dated February 7, 1965, was consummated. Under Article VI of that Agreement, any merger agreement then in effect, or any system-wide job protection agreement, could be preserved if employee representatives notified the Carrier within 60 days that the 1965 Agreement did not apply. The record establishes that the Organization elected to continue in effect the provisions of the January 10, 1962 Agreement. Subsequently, an Implementing Agreement was entered into on September 9, 1965.

Notwithstanding the above chronology, the Organization now seeks protective benefits provided by the February 7, 1965 Agreement. In essence, the Organization argues the June 4, 1991 National Agreement extended benefits of the February 7, 1965 Agreement to all employees in active service as of June 4, 1991, with ten or more years of service with the Carrier.

Article VI of the February 7, 1965 Agreement states in clear and unequivocal language that once notice is given by the employee representative, "... this agreement shall not apply on that carrier to employees represented by such representative." Article VII of the June 4, 1991 National Agreement does, in fact, amend certain provisions under Article 1, "Protected Employees" of the February 7, 1965 Agreement. The 1991 Agreement does not amend or alter in any manner the provisions of Article VI. If it were the intent of the parties to alter the provisions of Article VI, it was incumbent upon the party desiring such a change, as is now suggested by the Organization, to achieve such an amendment in writing. The fact is the clear language of Article VI was not altered by the 1991 National Agreement. There is simply no basis to now claim the February 7, 1965 Agreement applies on this property.

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AWARD

Claim denied.

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 4th day of March 1997.