

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32059
Docket No. MS-32334
97-3-95-3-169**

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

(Paul R. Burke

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

"In December, 1983, I was awarded by bid, the position of Signal Foreman-Signal Repair Shop. I performed the duties of this position through March 9th, 1994. Effective at the end of tour of duty March 9th, 1994 my position as Signal Foreman was abolished. My position (Job symbol C 266) was re-advertised as a Signal Inspector.

This was a violation of the current agreement between New Jersey Transit Rail operations, Inc. (NJTROI) and the Brotherhood of Railroad Signalmen (BRS), most specifically, page 3, of said Agreement-CLASSIFICATIONS. It is also a violation of the Signal Repair Shop Agreement and the corresponding Job Descriptions for the Signal Repair Shop which were formulated in February, 1990.

The remedy sought is the re-activation of the Signal Foreman's position and the abolishment of the Signal Inspector's position."

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 were given due notice of hearing thereon.

The Claimant in this case was regularly assigned as a Signal Foreman. Effective March 9, 1994, Claimant's Signal Foreman position was abolished. At the same time, Carrier established a position of Signal Inspector which position carried additional duties and responsibilities as well as a rate of pay higher than the abolished Signal Foreman position. Claimant, along with six other applicants, submitted bids for the Signal Inspector position. None of the applicants, including the Claimant, possessed seniority as a Signal Inspector. Carrier thereupon applied the provisions of the established training agreement and tested all of the applicants, including Claimant, to determine an applicant with sufficient signal operation knowledge to be assigned to the Inspector position. Claimant failed his test on two separate occasions. Claimant subsequently bid for and was awarded an Assistant Inspector position. There is no disagreement between the parties relative to this basic fact situation.

The Board has reviewed all of the arguments advanced by the respective parties to this dispute and is unable to conclude that Carrier violated any of the provisions of the negotiated rules agreement. There is no rule justification for Claimant's demand that he be allowed the rate differential between Signal Foreman and Assistant Signal Inspector. The second demand that the Board order the re-establishment of the Signal Foreman position is simply beyond the jurisdiction of this appellate tribunal which has no authority to order the creation of position. Such a determination rests solely with Management. In short, this case has no rule support or otherwise for any of the contentions advanced by Claimant. The claim in its entirety is denied.

AWARD

Claim denied.

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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 10th day of June 1997.