

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32512
Docket No. SG-33586
98-3-96-3-1116**

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
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

A. Claim on behalf of M. T. Van Becelaere payment of eight hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 10(d) and the CDC Implementing Agreement of November 1, 1988, when it used a trainee instead of the Claimant to fill a vacant CDCET position on August 14, 1995. Carrier’s File No. 960058. General Chairman’s File No. 50105689. BRS File Case No. 10195-UP.

B. Claim on behalf of D. W. Boswell and R. J. Nash for payment of four hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 10(d) and the CDC Implementing Agreement of November 1, 1988, when it used a trainee instead of the Claimants to fill a vacant CDCET position on August 15, 1995. Carrier’s File No. 960056. General Chairman’s File No. 50108388.1. BRS File Case No. 10197-UP.

C. Claim on behalf of D. W. Boswell and R. J. Nash for payment of four hours each at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 10(d) and the CDC Implementing Agreement of November 1, 1988, when it used a trainee instead of the Claimants to fill a vacant CDCET position on August 11,

1995. Carrier's File No. 960057 General Chairman's File No. 50108388.
BRS File Case No. 10198-UP."

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.

This case also contains a similar procedural error as was addressed in Third Division Award 32511. Here too, the Notice of Intent as filed by the Organization with the Board contained three separate claims covering separate situations which occurred on three separate claim dates. Claim "A" involved Claimant Van Becelaere with a claim date of August 14, 1995. Claim "B" involved Claimants Boswell and Nash with a claim date of August 15, 1995. Claim "C" involved Claimants Boswell and Nash with a claim date of August 11, 1995.

Carrier's ex-parte Submission to the Board addressed the situations which existed on August 11 and August 14, 1995. It presented no argument or position relative to the claim dated August 15, 1995. In Carrier's ex-parte Submission, the following statement is found:

"The claims in this case arose when, on August 11 and August 14, 1995, a CDCET was absent from work."

There is no reference to or position covering the situation which existed on August 15, 1995. Therefore, for the same reasons as are set forth in Award 32511, the claim as presented for August 15, 1995, must be sustained as presented solely because of Carrier's failure to include this third claim in its ex-parte Submission.

As for the situations on the other two claim dates, the Board is convinced that no Signalman-represented employee at the Centralized Dispatching Center facility was worked on an overtime basis on these dates, but rather the Signalman's work at the facility was distributed among the other employees who were already on duty. There is no evidence or convincing argument that the Trainee in question was actually filling a vacancy inasmuch as the Electronic Technician positions at the facility collectively perform any and all work of their craft which exists to be performed and therefore there was no vacancy as such to be filled.

On the basis of the evidence and the record as it exists in this case, the claims for August 11 and August 14, 1995, are denied for lack of rule support.

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 25th day of March 1998.