

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33908
Docket No. SG-34144
00-3-97-3-701**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

- A. Claim on behalf of C.D. Francis for payment of the difference between the Relief Signal Maintainer and Signalman rates, beginning May 10, 1996, and continuing for the term of this violation, and for reassignment to his previous position of Relief Signal Maintainer, account Carrier violated Rule 32(b) when it abolished the Claimant's former position and then required him to perform Relief Signal Maintainer's work. Carrier's File No. 0113.31-528(3). General Chairman's File No. 96-34-32. BRS File Case No. 10369-KCS.**
- B. Claim on behalf of G.D. Headrick for payment of the difference between the Relief Signal Maintainer and Signalman rates, beginning May 10, 1996, and continuing for the term of this violation, and for reassignment to his previous position of Relief Signal Maintainer, account Carrier violated Rule 32(b) when it abolished the Claimant's former position and then required him to perform Relief Signal Maintainer's work. Carrier's File No. 0113.31528(4). General Chairman's File No. 96-38-32. BRS File Case No. 10370-KCS.”**

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.

These claims filed on June 10 and 15, 1996, respectively, allege that Carrier violated Rule 32(b) by first abolishing Relief Signal Maintainer positions in May 1996 and then requiring Claimant Francis to provide vacation relief for a Signal Maintainer for a two week period in June 1996, and bypassing Claimant Headrick from such one week vacation Relief assignment in favor of another employee. They request compensation at the higher rate and reassignment to the abolished positions.

Rule 32(b), relied upon by the Organization, provides:

“FORCE REDUCTION/ABOLISHMENTS (NOTICE OF)

- (b) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement.”

The record reflects that Carrier abolished 13 monthly rated Relief Signal Maintainer positions and created a new 12 person signal gang with one new Signal Maintainer for the employees involved. The cause for such change was a decline in work necessitating a reshuffling of accounting expense allocations. The Organization voiced dismay at the loss of such positions, but did not file a claim protesting such action. The instant claims were filed when one former Relief Signal Maintainer was asked to cover a two week vacation relief position, during which he would receive the Signal Maintainer

rate of pay, and one former Relief Signal Maintainer was bypassed for a one week vacation relief position.

The Organization contends that Carrier violated Rule 32(b) by abolishing the Relief Signal Maintainer position at a higher monthly rate of pay, and creating new Signalman positions at a lower rate to perform the same work. Carrier argues that the Organization failed to meet its burden of proving a prima facie violation, because since the claim is about the actual filling of relief vacancies, not about the abolishment of the positions, and Carrier is within its rights to select a gang member to fill a relief assignment.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that Carrier violated Rule 32(b) or any other provision of the Agreement. There is no evidence establishing what either Claimant did in his former position of Relief Signal Maintainer, nor the job duties of their current Signalman positions. Thus, the Organization failed to show that the new job created covered "the same class of work" as the abolished position but at a lower rate of pay. Further, as noted above, this claim does not protest the abolition of the positions and nothing in the record indicates that Carrier acted inappropriately in abolishing the Relief Signal Maintainer positions. Given that no Relief positions existed in June 1996, the Organization failed to show that Carrier violated the Agreement by selecting Claimant Francis or not selecting Claimant Headrick to perform the temporary short term vacation Relief Signal Maintainer assignments.

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 24th day of January, 2000.