

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33998
Docket No. SG-34477
00-3-98-3-102**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of J.R. Wilson for payment of the difference between the Inspector and Assistant Inspector rates from December 22, 1995 to May 4, 1996, and for the position of Inspector at Avon Yards to be advertised and the Claimant given a senior date in the Inspector classification of October 10, 1995, account Carrier violated the current Signalmen’s Agreement, particularly Rules 4-G-2(a) and 2-A-1, when it did not advertise and fill the Inspector position at Avon Yards and used the Claimant to perform the duties of Inspector but paid him at the lower Assistant Inspector rate. Carrier’s File No. SG-918. General Chairman’s File No. RM2897-42-1096. BRS File Case No. 10540-CR.”

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.

On October 10, 1995 the Claimant, an Assistant Inspector, was upgraded and paid the Inspector rate at Avon Yard, owing to the fact that the incumbent Inspector had bid off to another position. Effective December 22, 1995, the Inspector at Hawthorne Yard was advised that he would additionally be assigned responsibility as Inspector at Avon Yard. Simultaneously, the Claimant was reverted to his permanent rate of Assistant Inspector at Avon.

On February 8, 1996, a claim was initiated on behalf of the Claimant, seeking three separate remedies, as follows:

1. Payment of the difference in rate between Assistant Inspector and Inspector from December 22, 1995 until May 4, 1996, when the Claimant was displaced.
2. Advertising and filling an Inspector position at Avon.
3. October 10, 1995 seniority date as Inspector for the Claimant, in view of the Carrier's failure to bulletin the position as of that date.

The Carrier argues that the claim may not properly be reviewed by the Board in view of the fact that the February 8, 1996 claim was initiated more than 60 days after October 10, 1995, a date for which the Organization seeks redress. The Board agrees as to the untimeliness of the claim regarding October 10, 1995. This, however, does not make invalid the pay claim commencing December 22, 1995, alleging an Agreement violation, because this date was less than 60 days from the claim initiation.

Initially, the Board lacks the authority to order the establishment of a position.

The Carrier also objected to the acceptance as part of the record of correspondence from the Organization written after the Senior Director's denial letter following conference, contending that the record was closed with such letter. This is not the generally accepted view. Rather, the cut-off for exchange of information occurs when a party files a Notice of Intent to file a dispute with the Board. As stated in Third Division Award 20773, and echoed in many other Awards:

“Any document presented on the property prior to the date of the Notice of Intention to File an Ex Parte Submission . . . is properly considered by the Board.”

There are varying views as to the propriety of information provided by one party immediately prior to filing a Notice of Intent (possibly making a rebuttal thereto untimely). This aspect, however, is not at issue here.

As to the merits, it is the Organization’s principal contention that the extension of Inspector responsibility to several locations as of December 22, 1995 was simply a ruse to avoid filling the previously vacated Inspector position at Avon. The Board notes the considerable overlap of required duties for Inspector and Assistant Inspector. There is no showing of any Rule violation in directing an Inspector to have responsibility for more than one location. The Claimant’s contention is that he continued to perform the full range of Inspector duties on and after December 22, 1995. The Board concludes, however, that his continued classification as Assistant Inspector is not improper, given his supervision continued by the Inspector assigned for Avon and Hawthorne.

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 19th day of April, 2000.

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