

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34085
Docket No. SG-34857
00-3-98-3-547**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Wheeling and Lake Erie Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling and Lake Erie Railway Co. (W&LE):

Claim on behalf of K. T. Poole for payment of three hours per week at the straight time rate beginning March 3, 1997, and continuing for term of the violation, account Carrier violated the current Signalmen’s Agreement, particularly Rule 19, when it used another employee to perform the duties of a Senior Signal Technician for more than 30 days without issuing a bulletin for that position. General Chairman’s File No. 231/970501. BRS File Case No. 10718-W&LE(S).”

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.

Claim of the Organization is that the Carrier discontinued the position of Senior Signal Technician and assigned said work to the position of Signal and Communication Foreman (Signal Gang Foreman), without bulletining the position. The Organization argues that the Carrier violated Rule 2 and Rule 19 in permitting Signal Gang Foreman Kolasa to perform the duties of Senior Signal Technician. The Claimant who holds seniority was not permitted to bid on the position which should have been bulletined as per Rule 19.

The claim at bar was pursued to this Board with dispute over the applicability of various Rules and facts. The Carrier denied the applicability of Rules 2 and 19, maintaining that it had no requirement to maintain the position of Senior System Signal Technician and no need to fill the position through a bulletin. The Carrier argued that it was in full compliance with Appendix 1. It further argued that nothing in Rule 2 protected the work of Senior Signal Technician granting it exclusivity and prohibiting either its abolishment or the work of the position from being performed by the Signal Gang Foreman.

Rule 2A is a Classification of Work Rule which states that:

“Senior Signal Technician - An employee whose primary duties are overall coordination and control of daily activities of the Signal department. The Senior Technician will be required to supervise and direct the work of Signal employees and is not restricted from performing the work of the employees he supervises.”

Rule 2F similarly lists the duties performed and classified as those of the Signal and Communication Foreman “whose primary duties are to supervise and direct the work of signal and communication employees and who is not restricted from performing the work of the employee he supervises.” It is clear that the Carrier did not bulletin the position of Senior Signal Technician and it is also clear from this record that the work continued to be performed by the Signal Gang Foreman.

The Board reviewed Appendix 1 and finds that the Agreement does not require the Carrier to bulletin the position. Neither does Rule 19 under this instant Agreement. Appendix 1 states:

“The W&LE shall maintain at the least one (1) position as Senior Technician and three (3) positions as System Technician. However if there is (sic) two (2) Senior Technicians, the W&LE may reduce the Systems Technicians to two (2) positions. One Senior or System Technicians shall be assigned to communications.”

The Board finds this case controlled by Appendix 1 in that the Carrier had an Agreement right to reduce the two Senior Technician positions to just one Senior Technician position.

There are interesting problems with the case at bar. The parties argue over which employee is the proper Claimant. The probative evidence presented by the Organization by way of two letters suggests that the Carrier erred. After review, the Board finds the following. The letters from both employees Poole and Kolasa support the finding that the Senior Signal Technician had overall responsibility over the signal department and the Signal Gang Foreman. The probative evidence is that the Carrier should have eliminated the Signal Gang Foreman position and held onto the Senior Signal Technician position. Under Appendix 1, Mr. Kolasa would be the proper Claimant. He held the position of Signal Gang Foreman. He would be doing the higher rated job. The Organization’s reliance upon Third Division Awards 8526 and 27600 are not on point, because in those cases, the Carrier abolished the higher rated position and then assigned the work to the lower rated position. Those Awards involved the Carrier’s elimination of positions for the purposes of reducing pay. In this instant case, the Carrier has a right to maintain only one Senior Technician and the pay for both positions is identical. Therefore, even if an Agreement violation were found, there would be no difference in pay for the proper employee. Even if an error was made, it is form without substance in this instance.

The Board holds that Rule 19 has not been violated. The Rule specifies how and does not mandate the bulletining of the positions herein disputed. These positions are covered by Appendix 1 and the applicable employee affected has not suffered any loss of income as the positions pay identical rates. Under the conditions at bar, the Board will deny the claim.

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 25th day of May, 2000.