

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35580
Docket No. SG-35763
01-3-99-3-743**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

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

Claim on behalf of J. A. Glasser, for payment of three hours and 30 minutes at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 10, when on May 22, 1998, it allowed another Signal Inspector to perform overtime work on the Claimant’s assigned district and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1153659. General Chairman’s File No. 81105648. BRS File Case No. 11095-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.

The claim as described in the Statement of Claim, *supra*, had its genesis in a letter dated July 11, 1998, from the Organization's Local Chairman to the Manager Field Engineering Administration. The claim as presented by the Local Chairman was in substantial form the same as described in the Statement of Claim and included the name of the other employee who was used to perform the service in dispute. The initial claim was denied by letter dated September 4, 1998. The claim was subsequently progressed to the highest appeals Officer on the property, conferenced by the parties and ultimately denied by the highest appeals Officer on June 30, 1999. The claim as denied was eventually listed for final disposition by the Board on September 29, 1999. All of this chronology is found in the Organization's Ex-Parte Submission to the Board.

However, the Carrier's Ex-Parte Submission to the Board, after identifying the proper subject, digressed and argued a claim that is completely different from the Statement of Claim. All of the Carrier's arguments, exhibits and conclusions concerned themselves with a claim dated May 31, 1998 - not May 22, 1998. While the named Claimant was the same, the factual circumstances were different; the other employees involved were different; the reasons advanced by the Carrier in defense of its position concerned circumstances that did not exist in the instant case. In short, the Carrier's entire Ex-Parte Submission had nothing to do with the Statement of Claim in this case.

The Board is faced, therefore, with a situation in which it, in effect, has no Submission from the Carrier addressing the claim that was properly made and that is before the Board for resolution. Such a situation leaves the position and assertions of the Organization unchallenged and uncontroverted. The Board has no recourse but to sustain the claim as presented. This decision is based solely on the procedural defect that exists in this particular case and has no precedential value in relation to the merits of the case.

AWARD

Claim sustained.

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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 24th day of July, 2001.