

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36077
Docket No. SG-36041
02-3-00-3-166**

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
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of A.M. Davis for the assignment of an Assistant Signalmen’s seniority date of January 1, 1998, and payment of compensation for all lost wages beginning on January 1, 1998 and continuing until this violation ceases, account Carrier violated the current Signalmen’s Agreement, particularly Rule 5, when the Claimant was improperly demoted to the Class of Prospective Assistant Signalman. Carrier File No. 15 (99-65). BRS File Case No. 11163-B&O.”

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.

There exists on this property a “Side Letter No. 1 to CSXT Labor Agreement No. 15-46-97” which, by agreement of the parties, created a job classification of “Prospective

Assistant Signalmen.” Side Letter No. 1 provided for, among other considerations, a rate of pay 14 cents per hour less than the Assistant Signalman rate of pay for a period up to one year from the date hired to permit the new employee to gain practical experience in the craft, after which the employee would be permitted to apply for an Assistant Signalman position and thereby establish Assistant Signalman seniority standing.

On August 21, 1997, the Claimant in this case submitted an application for employment as a Prospective Assistant Signalman. He began his employment in this classification on September 23, 1997. Due to a clerical timekeeping error, the Claimant was incorrectly paid at the Assistant Signalman rate of pay from September 23, 1997 until January 26, 1998, when the error was detected and corrected. Thereafter, the Claimant continued in service as a Prospective Assistant Signalman at the proper rate of pay, i.e., 14 cents per hour less than the Assistant Signalman rate of pay.

The case record contains evidence that the Claimant contacted Carrier Officials on several occasions following January 26, 1998, and complained of being “demoted” from an Assistant Signalman position. However, there is no indication or evidence in the case record that anything definitive developed from these contacts until January 9, 1999, when the Organization initiated a claim on behalf of the Claimant alleging a violation by the Carrier of the provisions of Rule 5 of the Agreement retroactively to January 1, 1998, even though the date of record on which the erroneous payroll allowance was corrected occurred on January 26, 1998.

Rule 5 as referenced in the STATEMENT OF CLAIM reads as follows:

**“RULE 5
ASSISTANT SIGNALMAN, ASSISTANT SIGNAL MAINTAINER**

- (a) An employee in training for the position of signalman or signal maintainer, working with and under the direction of a signalman or signal maintainer, shall be classified as an Assistant Signalman or Assistant Signal Maintainer.

The number of assistant signalmen and assistant signal maintainers on a seniority district shall be consistent with the requirements of the service and the signal apparatus to be installed or maintained. Not more than one (1) assistant signalman or assistant signal maintainer will be assigned to a signalman or signal maintainer.

- (b) When signal helpers are available they shall be given preference for promotion to a position of assistant; ability to learn the work being sufficient, seniority will govern. They will be continued in such position for eight periods of 130 days of service each, overtime excluded, except that:
- (1) An employee failing to show sufficient aptitude to learn the work within a period of 90 days will be returned to the position of signal helper, retaining his seniority rights as a signal helper only, or
 - (2) An assistant shall have the right to promotion to a position of signalman or signal maintainer in the order of his seniority if a position is open and he can qualify in less than eight periods. If an employee so promoted fails to meet the requirements of the position within 90 days, he will be removed from such position and may retain and exercise his seniority rights as an assistant and signal helper only to secure additional training and experience.
- (c) An assistant signalman or assistant signal maintainer will be classified and paid in accordance with his previous experience in railroad signal work in that class or a higher class on this and other railroads;
- (d) At the expiration of eight periods of service as assistant signalman or assistant signal maintainer, an employee will be promoted through assignment to a position of signalman or signal maintainer as provided in Rule 47(a). Until such time he will continue at the highest assistants' rate of pay.

If an assistant signalman or assistant signal maintainer, establishing seniority as such after the effective date of this Agreement, refuses to accept or fails to qualify for promotion to a position of signalman or signal maintainer after completion of eight periods of training, he will forfeit his seniority in the assistants' class and be demoted to a helper. Such demoted employee may exercise his seniority in the helpers' class only by bidding on vacancies or new position or by displacing

the helper his junior with the least seniority in the class, and will not again be promoted to a position above that of helper.

- (e) An assistant who has acquired seniority as a signalman or signal maintainer prior to completing his eight periods of training and later is returned to a position of assistant signalman or assistant signal maintainer because of force reduction or displacement will be paid at the highest assistants' rate."

After a thorough review of the case record and a consideration of the respective positions of the parties, the Board is unable to conclude that there has been any violation of the provisions of Rule 5 of the Agreement. Neither has there been any proven violation of the provisions of Side Letter No. 1 dealing specifically with Prospective Assistant Signalmen. The clerical payroll error that occurred during the brief period in question did not convert the Claimant from a Prospective Assistant Signalman to an Assistant Signalman. The extended delay of more than 11 months between the correction of the clerical payroll error on January 26, 1998, and the initiation of a claim on January 9, 1999, leaves the Board with no recourse but to dismiss the claim as being untimely presented.

AWARD

Claim dismissed.

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 18th day of June, 2002.