

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36631
Docket No. SG-36067
03-3-00-3-221

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 Company:

Claim on behalf of M. W. Fricks, J. H. Pantoja, W. D. Cate, E. T. Gonzales and any other former SP Signal Technician that was re-classified to the position of Signal Inspector to be reclassified as Electronic Technicians; for the Claimants to be Grand-fathered from having to obtain FCC Licenses; and for compensation for the difference between the rate of pay of Electronic Technician and that of Signal Inspector commencing January 1, 1999 and continuing until the violation ceases; a carrier violated the current Signalmen's Agreement, particularly Rule 56, and Side Letters No. 3 and No. 4, when it reclassified the Claimants from Signal Technicians to Signal Inspectors. Carrier File No. 1179865. General Chairman's File No. SWGC-1947. BRS File Case No. 11107-SP."

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.

This claim filed on February 21, 1999, protests the Carrier's reclassification of former SP Signal Technicians to the classification of Signal Inspector (SI) rather than Electronic Technician (ET) under Rule 56 of the new Agreement effective January 1, 1999 and Side Letter No. 3 concerning grandfathering of such positions.

The record reveals that, at one time on the SP, the separate positions of Signal Inspector and Electronic Technician were merged into the classification of Signal Technician, a position that did not exist under the former UP Agreement. When the parties herein met to negotiate the new UP-BRS Agreement effective January 1, 1999, under which this claim is filed, it is undisputed that they agreed that the classification of work would be taken from the former UP Agreement, in effect, splitting the Signal Technician back to its two original classifications, Signal Inspector and Electronic Technician. Side Letter No. 3 sets forth the parties' agreement that those employees currently performing positions requiring FCC licensing (Electronic Technician and/or Retarder Yard Maintainer) who do not have such license, would be grandfathered into such positions. Side Letter No. 4 provides the procedure to be utilized by an employee notified that his/her position would be reclassified, including accepting the position or requesting that such position be bulletined and exercising contractual seniority.

The Organization argues that the Carrier violated Rule 56 - Established Positions, which provides, in pertinent part:

"Established positions will 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 the rules of this agreement."

It asserts that the parties agreed to grandfather all former SP Signal Technicians into the classification of Electronic Technician, supporting its filing of a class action claim on their behalf. The Organization argues that one named Claimant, E. T. Gonzales, worked with another employee doing ET work, and that after the reclassification, the Carrier had no ETs on the property. It requests the grandfathering of all former Signal Technicians to the ET classification without the need for FCC licensing.

The Carrier argues that the Organization did not establish that the parties agreed that all former SP Signal Technicians would be reclassified as ETs, and that, because there was no Signal Technician classification under the Agreement, Rule 56 and Side Letter No. 3 do not apply in this case. Further, the Carrier contends that the Organization failed to sustain its burden of proving that any of the named Claimants or former SP Signal Technicians actually performed the type of work normally done by ETs, to support their

reclassification. It relies upon Third Division Award 35923 in support of its request that the claim be denied.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement in this case. The record is devoid of any evidence as to the nature of the work performed by any of the Claimants, both before their reclassification and subsequent thereto, or whether they engaged in functions normally associated with the ET classification. Further, there is no proof that the parties agreed that all prior SP Signal Technicians would be reclassified as ETs regardless of the nature of the work they actually performed. As noted by the Board in Third Division Award 35923, in order for the Organization to succeed in proving that the Claimants are entitled to the higher rate of pay established for a different classification, it is required to identify the work performed by the higher rated classification with specificity, and to show that the Claimants actually perform that higher rated work. Such proof is missing in the instant case. Accordingly, the Board finds that the Organization failed to meet its burden of establishing a violation of the Agreement herein.

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 29th day of July 2003.