

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36838
Docket No. SG-36703
04-3-01-3-249

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
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of G. E. Robertson, F. X. Connor, and M. Gregory for payment of the difference in rates between Maintainer and Electronic Technician (ET) for all hours worked by each Claimant commencing on October 4, 1999 and continuing thereafter. Account Carrier violated the current Signalmen's Agreement, particularly Rule 33, when Carrier required the Claimants to perform ET work on a routine basis and then failed to compensate them at the higher rate for performing this service. Carrier's File No. NEC-BRS(S)-SD-873. General Chairman's File No. JY 321023-65600. BRS File Case No. 11608-NRPC-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.

This claim protests the rate of pay being received by the Claimants, Odenton, Maryland Maintainers, from October 4, 1999 onward, based on the contention that they are performing the same work as Electronic Technicians (ET), who receive \$2.36/hour more, and relying upon the following language of the Agreement:

"RULE 33 - TOUR WHERE MORE THAN ONE RATE APPLICABLE

An employee, who during a tour of duty performs work for which more than one rate of pay is applicable, shall be paid for the entire tour of duty at the highest rate of pay applicable to any of the work performed. An employee who performs service temporarily in a lower rated position shall not have his rate reduced."

The Organization argues that prior to October 4, 1999 the Carrier converted some Maintainer positions to ET positions due to the communications work they performed, and asserts that the Claimants are also responsible for performing these same communications related tasks, requiring that they be compensated at the higher rate of pay. The Organization tendered to the Carrier during the processing of the claim on the property, a five page listing of the ordinary and extraordinary duties performed by "Agreement Covered Communications Employees" in support of its claim, and asserts that when an employee substantially performs work in a higher rated position the Board has held that he should be compensated at the higher rate, citing Third Division Awards 12634, 20311, 22533, and 27982.

The Carrier contends that the Organization has failed to present any evidence to meet its burden of proving the essential elements of a Rule 33 violation, including the work actually being performed by the Claimants on the claim dates and what work is alleged to be ET work. The Carrier asserts that the generic list of duties of "Agreement Covered Communications Employees" does not distinguish between the work ordinarily performed by ETs and Maintainers. The Carrier

argues that the claim lacks specificity and is vague, and absent any evidence of what functions the Claimants were actually performing, the claim must be dismissed for failure of proof, citing Public Law Board No. 5081, Award 6; Third Division Awards 19833, 19960, 20356, 20147, 28782 and Second Division Award 11385. It notes that the Claimants were properly compensated for the work they performed.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Rule 33 in this case. An allegation that the Claimants performed the work of ETs, listing general communications duties of all department employees, cannot substitute for proof of the actual functions performed by the Claimants on the claim dates and identification of which of such duties was reserved to the ET, rather than Maintainer, classification. Assertions without more do not rise to the level of probative evidence. Public Law Board No. 5081, Award 6. The Organization failed to provide any specific evidence in support of its alleged violation, and, accordingly, the claim must fail.

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 28th day of January 2004.