

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36886
Docket No. SG-36968
04-3-01-3-569

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 J. Reisenwitz, III for payment for his loss of earnings due to the difference between an Assistant Foreman's rate and a Maintainer's rate starting April 17, 2000, and that the abolished position be reinstated. Account Carrier violated the current Signalmen's Agreement, particularly Rule 4 and Appendix A-1, part II section O, when it abolished the Office Foreman C&S and caused the Claimant to be displaced. Carrier's File No. NEC-BRS(S)-SD-912. General Chairman's File No. JY 321058-181000. BRS File Case No. 11852-NRPC."

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 is premised upon the Carrier's abolishment of the position of Office Foreman, Gang K012, and the effect of the incumbent's displacement upon the Claimant. The Carrier posted a notice on April 12, 2000 that such position would be abolished effective the close of business April 17, 2000 in connection with a minor rearrangement of forces. The incumbent, D. J. Smith, displaced the Claimant from his position of Assistant Foreman, and the Claimant displaced a junior Maintainer. The Claimant remained in that position until July 25, 2000 when he was awarded the higher rated position of Inspector.

The Organization argues that the Carrier violated Rule 4 and Appendix A-1 when it abolished the Foreman position and assigned the work to a non-covered employee. It also asserts that the Carrier violated Appendix A-1 by abolishing a Foreman's position rather than a Trainee's position, which must be the first job to be abolished in a reduction of forces. The Organization requests that the Foreman position in issue be restored and that the Claimant be compensated for the loss of wages associated with his displacement.

The Carrier initially argues that it is contractually permitted to abolish positions under Rule 15 and that it complied with all notice and posting requirements in this case. It notes that the Organization's request for restoration of the Foreman's position is duplicative of its remedy request in Third Division Award 36882 and should be dismissed. The Carrier contends that the Organization failed to establish a violation of Rule 4, because it was contractually entitled to abolish the position and there is no evidence that another position was created to perform the disputed work. The Carrier also argues that Appendix A-1 is inapplicable because this was not a reduction in forces in Seniority District No. 2, and no employees were furloughed. Finally, the Carrier asserts that any loss of earnings suffered by the Claimant was of his own doing because he exercised his seniority to a lower rated position despite the fact that he had the seniority to displace to an equally rated Assistant Foreman position.

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 Carrier complied with all of the notice, posting and seniority requirements of Rules 13 and 15 with respect to the abolishment of the Foreman's position and the resulting displacements. Because the underlying foundation of this claim is the allegation that the abolishment was illegal, and the Board has found to the contrary, the claim must be denied.

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 25th day of February 2004.