

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37088
Docket No. SG-37917
04-3-03-3-323**

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
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Shared Assets (CR(SA)):

Claim on behalf of all BRS rostered employees seniority district 18 working on Conrail S.A.A. Detroit District which includes E. Tatar, W. T. Chrusciel, R. Gomez, J. L. Britton, W. R. Dishon, J. C. D’Abreau, K. V. Downing, J. O. Friedlund, R. J. Ponagai, M. J. Povlich, D. N. Green, R. A. Danneels, D. A. Krause, V. Kalen and E. Wanzer, for payment to each employee occupying any of the positions enumerated in the initial letter of claim, the applicable overtime rate for all hours worked other than a normal assignment Monday through Friday 7:00 a.m. to 3:30 p.m., and straight time for all hours between 7:00 a.m. to 3:30 p.m., Monday through Friday, account Carrier violated the current Signalmen’s Agreement, particularly Rule 5-A-1, when on September 25, 2001, Carrier unilaterally abolished, advertised and awarded the positions enumerated in the initial letter of claim. This claim was filed as a continuing claim until the issue is resolved. Carrier’s File No. None. General Chairman’s File No. 10-17-01. BRS File Case No. 12671-CR(SA).”

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 dispute had its beginnings on November 17, 2001 in a letter from the Local Chairman of the Organization to the Carrier which read in pertinent part as follows:

“Please accept this continuing claim on behalf of all B.R.S. rostered employees seniority district 18 working on Conrail S.A.A. Detroit District, which includes the following, Gene Tatar, Walter Chrusciel, Rudy Gomez, Jim Britton, Bob Dishon, John D’Abreau, Kerry Downing, Jim Friedlund, Bob Ponagai, Mike Povlich, Doug Green, Ron Danneels, Dave Krause, Vince Kalen, Enos Wanzer.

* * *

This dispute arose on September 25, 2001 when carrier abolished, advertised and awarded the following position:

<u>Bulletin #</u>	<u>Position</u>
018-01	Asst. Inspector
019-01	Maintainer C&S
020-01	Asst. Inspector
021-01	Maintainer C&S
022-01	Asst. Inspector

023-01	Maintainer Test
016-01	Inspector
017-01	Maintainer C&S

Also carrier made no attempt to resolve this issue with the General Chairman by providing necessary operational requirements.

Carrier should now be required to pay each of the employees occupying any of the above positions the following:

- Applicable overtime rate for all hours worked other than a normal assignment Monday thru Friday 7:00am to 3:30pm.
- Straight time rate for all hours between 7:00am to 3:30pm Monday thru Friday."

The case record reflects that this claim was discussed on December 10, 2001, with the General Chairman of the Organization. Subsequently, by letter dated December 12, 2001, the Carrier informed the Organization's General Chairman in pertinent part as follows:

"Reference is made to our meeting and discussion on December 10, 2001, at Philadelphia, PA, which concerned the Carrier's re-arrangement of work schedules at Detroit, MI pursuant to Rules 4-A-3 and 5-A-1 to include different shift starting times and work days including Saturday and Sunday.

* * *

Based on your arguments, the Carrier will arrange to re-advertise the positions of Inspector and Maintainer Test to a first trick work schedule of Monday to Friday. The positions of Maintainer and Assistant Inspector with work days including Saturday and/or Sunday will be abolished and re-advertised as second and third trick assignments working Monday to Friday pursuant to Rule 4-A-3(a).

Arrangements will be made to compensate those employees working on Saturday and Sunday under the current schedule with the overtime rate of pay for all straight time hours worked."

Following additional discussions between the parties, the Carrier by letter dated March 8, 2002, notified the Organization's General Chairman as follows:

"Initially, let me remind you that at the outset of our meeting on December 10, 2001, I asked you whether you were authorized to handle Claim No. 10-17-01 submitted by BRS Local Chairman K. Downing which concerned work schedules at Detroit-SAA that included Saturdays and Sundays as part of a 5 day work schedule. You assured me that as General Chairman, you were authorized to discuss the issues and settle the matter, if possible.

During the course of our meeting, Conrail acknowledged that certain independent positions such as signalman-inspector and electronic technician were improperly advertised. You acknowledged that there was no rule in the Conrail-BRS collective bargaining agreement which prevented maintainer assignments from working 2nd and 3rd trick on a Monday to Friday work schedule. As part of our discussion, the Carrier agreed to payment of time worked on Saturdays and Sundays at the overtime rate of pay and re-advertisement of all positions to a Monday-Friday work schedule.

Accordingly, Conrail compensated the following employees as part of our understanding and settlement:

V. Kalen	- \$1,979.12	R. Gomez	- \$ 323.84
E. Tatar	- \$1,752.96	R. A. Danneels	- \$1,047.04
D. N. Green	- \$1,781.12	R. J. Ponagai	- \$ 967.20
M. J. Povlich	- \$1,832.64	W. R. Dishon	- \$1,133.44

In a subsequent phone discussion on January 24, 2002, you contacted Conrail Chief Engineer C&S Ralph Inman and myself to

request the double time rate of pay for those Employee-Claimants who had received the time and one-half rate of pay account of working on Sunday pursuant to Rule 4-B-1. The Carrier agreed that additional compensation was proper pursuant to our discussion and settlement on December 10, 2001. As such, the following Employee-Claimants will receive additional compensation:

V. Kalen	- \$989.56	R. Gomez	- \$161.92
E. Tatar	- \$876.48	R. A. Danneels	- \$483.04
D. N. Green	- \$890.56	R. J. Ponagai	- \$483.60
M. J. Povlich	- \$876.48	W. R. Dishon	- \$566.72"

From the case record as it exists before the Board, it is apparent that the complained of situation that precipitated this penalty claim has been resolved by the parties. Clearly, the Organization's General Chairman had the authority to settle the claim. Clearly, the claim as presented has been settled leaving nothing for the Board to adjudicate. Therefore, the claim is dismissed.

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 21st day of July 2004.