

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
—THIRD DIVISION**

**Award No. 37525
Docket No. SG-36571
05-3-01-3-80**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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 A. S. McDonald, Jr., A. K. Simonton, D. R. Griffin, H. A. Douglas and K. A. Bertolucci for payment of Two Hundred Dollars each per month beginning on February 1, 2000 and continuing until this dispute is resolved. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 39, when Carrier failed to pay California Seniority Roster pay to the Claimants. Carrier File No. 1219337. General Chairman’s File No. N-39-025. BRS File Case No. 11490-UP.”

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.

The Claimants in this dispute are five Signal employees working either in the Harriman Dispatch Center in Omaha, Nebraska, or the Council Bluffs Board Repair Office in Council Bluffs, Iowa, on the February 1, 2000 claim date. They seek an order from the Board directing the Carrier to pay them a \$200.00 monthly California cost-of-living allowance for each month commencing with the January 1, 1999 effective date of Rule 39. The language of the Rule relied upon reads in part as follows:

"RULE 39 – RATES OF PAY

The Carrier will compile a new rate sheet each time the rate of pay changes on the individual positions listed, including the basic rate and the rate including the cost-of-living allowance. A copy of the rate sheets will be furnished to the General Chairman.

NOTE 1: Signal employees holding seniority on the California District and actively working will receive an additional payment of Two Hundred Dollars (\$200.00) per month."

The Organization argues on behalf of the Claimants that each of the five held seniority on California Seniority Roster 4509, was actively working, and therefore is entitled to the \$200.00 monthly payment at issue.

The Carrier contends at the outset that the claim must fail on procedural grounds because it was not filed within 60 days of the occurrence. More particularly, it points out that the claim was not presented to the Carrier until February 1, 2000 even though the provisions in question became effective on January 1, 1999.

With respect to the merits, the Carrier takes the position that the claim is an attempt to enlarge a very limited pay supplement beyond its obvious boundaries. In support it recounts the bargaining history of the provision in dispute. As set forth in the statements of several Carrier officials who negotiated the California supplement, it was initially proposed by the Organization out of concern for higher

living costs in California and in recognition of similar allowances paid to Signal Department employees on other railroads. According to the Carrier, the clear intention of the former General Chairman and the Carrier negotiators was to extend the supplemental payment only to employees who actually work in California. In short, at the time the allowance was negotiated, it was understood between the parties that eligibility for the allowance was dependent on an employee holding seniority on the California District Roster and either actively working in California or on a Zone gang there.

Upon careful review of the record before the Board and for the reasons set forth below, the Board concludes that the Organization at the local level has, as the Carrier alleges, failed to advance its claim in a timely manner, depriving the Board of jurisdiction to reach the merits of the dispute.

Rule 69 (a) of the Agreement plainly requires that "all claims or grievances shall be . . . presented in writing . . . within 60 days from the date of the occurrence on which the claim or grievance is based." The Board rejects the contention that by its nature the claim is continuing. It is based not on a violation that occurs repeatedly over time, but on the January 1, 1999 implementation of a new pay provision, a discrete event with potentially continuing liability. In this instance there are especially strong reasons for invoking the doctrine of laches. The untimely handling of the matter by the new General Chairman resulted in potential prejudice to the Carrier. During the 13 months elapsing between the date the allowance cut in and the date the claim was presented, the three officials who negotiated the new terms on behalf of the Organization - General Chairmen Macken and Jones and Vice President VanArtsdalen - left office. New Organization officials stepped in and one year after the bargaining this claim was presented with no apparent awareness of the negotiating history. In consequence, the Carrier was in a very real sense compromised in its ability to mount an effective defense.

The matter is properly barred from further consideration.

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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 23rd day of June 2005.