

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37616
Docket No. SG-38016
05-3-02-3-749**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Canadian National / Illinois Central Railroad
(Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central (IC):

Claim on behalf of B. Magee, for the differential between the Signalman's rate of pay and the Traveling Signal Maintainer's rate of pay starting on November 26, 2001, and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 16, 18, 31 and 32, when it failed to place the Claimant on the monthly rated Traveling Signal Maintainer's position that he was awarded. Carrier canceled the bulletin then reissued the position as a lower paying hourly rated position. Carrier's File No. IC-135-02-05. General Chairman's File No. IC-006-02. BRS File Case No. 12448-IC."

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.

In August 1972 the Illinois Central (IC) and the Gulf, Mobile & Ohio (GM&O) Railroads merged. As a result of the merger the Carrier and the Organization entered into an Agreement covering all employees represented by the BRS. One provision dealt with the rates of pay for Signal Maintainers. In Appendix P, paragraph 3, the parties agreed that:

- “3. Signal Maintainer's rate of pay will be \$6.95 per hour (without COLA), except for those employees who, on the effective date of the new rules agreement, are on a monthly rated Signal Maintainer position on the former GM&O Southern Region. These employees will continue to receive the monthly rate which will be adjusted by all future general wage increases, including COLA, until these employees leave these positions. The overtime provisions of Rule 32 will apply to these signal maintainers while receiving the monthly rate of pay.”

In October 2001, a former GM&O monthly rated employee left his job. On October 26, 2001 the Carrier awarded the job to the Claimant. On the same date the Carrier realized its mistake, canceled the award of the job and rebulletined the job as an hourly rated job which the Claimant did not bid.

The Organization filed this claim on behalf of the Claimant asking for the difference in rate.

The Organization bears the burden to prove that the Carrier violated the Agreement. In this case it failed to meet its burden. One reason is that the Claimant did not bid on the job, so there is no basis to claim a rate for a job which is not held.

However, the basic reason that the claim is invalid is because the 1976 Agreement provided for hourly rated Signal Maintainers except for those former Southern Region GM&O monthly rated employees. Stated differently, the rate applied to the incumbent employees, not to the position.

When the former GM&O Signal Maintainer left the job, his position was properly bulletined as an hourly rated job.

The Agreement was not violated.

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 22nd day of September 2005.