

****SECOND CORRECTED****

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37896
Docket No. SG-36786
06-3-01-3-326

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 C. J. Ehlers for payment of all lost wages and expenses beginning on April 18, 2000 and continuing for the term of the violation. Account Carrier violated the current Signalmen's Agreement, particularly Rule 56, when it abolished the Claimant's Signaller position on Gang No. 2670 and replaced it with an Assistant Signaller's position. Carrier File No. 1232459. General Chairman's File No. S-56-024. BRS File Case No. 11715-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 Organization submitted this claim on April 20, 2000, after the Carrier abolished the Claimant's Class 1 Signaller's position from Gang 2670 and simultaneously established a Class 2 Assistant Signaller position on the same gang. The claim contends that the Carrier's action was in violation of Rule 56 – ESTABLISHED POSITIONS, which provides as follows:

"Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work for the purposes of reducing the rate of pay or evading the application of the rules in this agreement."

The Carrier's denials of the claim in case handling took the position that no violation of Rule 56 was involved because the new Assistant Signaller position was created not to have the incumbent perform the duties of a Signaller, but to provide training opportunities for newly hired Assistant Signalmen.

It is of course beyond dispute that barring Agreement limitations, the Carrier generally has the unfettered right to fix its manpower needs, including establishing and abolishing positions as dictated by the needs of the service. Rule 53 itself expressly provides that, "Nothing in this agreement requires the maintenance of any position." That principle is not challenged here. Rather, the Organization argues that the Carrier simply discontinued the Claimant's position and created a new one for him involving substantially the same duties in order to avoid payment of a higher rate of pay.

If the facts alleged had been established, there would be no question the Carrier's action would fly in the face of Rule 56. In this dispute, however, the record is far from clear that the facts are as the Claimant alleges.

Rules 1 and 2 set forth the respective responsibilities of Signalmen and Assistant Signalmen:

"Rule 1

- (O) **Signalman:** An employee assigned to repairing and charging storage batteries or the construction, repair, assembling or wiring of signal apparatus as outlined in the scope Rule of this agreement.

Rule 2

- (A) **Assistant Signalman Candidate:** An employee who is a candidate for training.
- (B) **Assistant Signalman:** An employee in training for positions coming within the BRS collective bargaining agreement working under the direction of a signalman, signal maintainer, or signal inspector; and performing work generally recognized as signal work."

The Carrier challenges the Organization's contention that it was motivated to abolish the position at issue to save labor costs. It states in its claim denials that it cut the position solely to meet its training needs for new Assistant Signalmen. Further, it contends, the Claimant had the right to displace had he chosen to do so, but opted to bid the new position, which entailed different work but the same rate of pay as the Signalman position.

The Board notes that throughout claim handling, the Carrier consistently maintained that the Claimant's gang - a Foreman, four Signalmen, and no Assistant Signalman - had experienced an "onslaught of new hires" who had to be spread out through various gangs for training. In order to have that training accomplished by skilled Signalmen, it planned to use its excess Signalmen to teach and train new hires and Assistant Signalmen. Had the Organization in response demonstrated that specific duties had been assigned to the Claimant in his new role that properly could be performed exclusively by Signalmen, its position would have merit. Absent such proof, the claim must fail for lack of proof.

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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 August 2006.