

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38094
Docket No. SG-37540
07-3-02-3-607**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP)

Claim on behalf of D. L. Wright, for six hours and 22 minutes at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 16 and 80, when it called another employee instead of the Claimant [to] repair and test a Hot Box Detector at M.P. 1202.3, on the Claimant’s assigned territory depriving him of the opportunity to perform this work. Carrier’s File No. 1283659. General Chairman’s File No. W-1-120. BRS File Case No. 12282-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 essential facts of this matter are not in dispute. On July 15, 2001, there was a hot box detector failure at Mile Post 1202.3 on the Carrier's track in rural Arizona. It is undisputed in this record that the regularly assigned Signal Maintainer was unavailable for call. In addition, the first two alternates for calls on this territory were unavailable. The Carrier then called a Signal Inspector who responded to the call and made the necessary repairs to the hot box detector.

By letter of August 13, 2001, the Organization filed the instant claim. It insisted that the hot box in question was within the Claimant's assigned District and, therefore, he should have been called in lieu of the Signal Inspector. The Carrier denied the claim on October 22, 2001. That denial was appealed on November 12, 2001. The Organization contended that the work at issue was work guaranteed to Signal Technicians in accordance with Rule 1 of the Agreement.

In its January 8, 2002 denial of that appeal the Carrier noted that the regular assignee was unavailable, and insisted that it was not "required to delay traffic" when an employee closer to the site than the Claimant was available. Moreover, the Carrier contended that nothing in Rule 1 reserved the work in question to the Claimant, and that the employee called was well qualified to make the necessary repairs.

The Board reviewed the parties' positions in this matter, as well as the pertinent language of Rule 1. We do not find anything in the wording of Rule 1 that would prevent the Carrier from calling a proximate, qualified employee when it has determined that the regularly assigned employee is not available. Nor do we find that Rule 1 restricts the particular work in question to Signalmen.

It is undisputed that everyone on the call list – including the two adjoining Signal Maintainers – was unavailable. Nothing in the Agreement between the parties prevents the Carrier from calling the nearest qualified and available employee to perform the work at issue under those circumstances. Accordingly, we find that the Organization has not met its burden of persuasion in this case.

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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 21st day of February 2007.