

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39516
Docket No. SG-38937
09-3-NRAB-00003-050377
(05-3-377)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn 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:

Claim on behalf of J. L. Lawson and B. M. Wilson, to have their positions of Signal Maintainers at the Pine Bluff Hump Yard reclassified as Interlocking Repairmen, advertised for seniority choice and to allow the Claimants to exercise their seniority. Account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 32, when on March 31, 2004, it made a material change in the Claimants’ assigned territory and then failed to re-advertise their positions for seniority choice when it was requested within the 20-day time limit provisions of Rule 32. Carrier's File No. 1402903 (S-4-UP117). General Chairman's File No. S-1, 32-497. BRS File Case No. 13208-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.

At the time this dispute arose, the Claimants were assigned to the position of Signal Maintainer with headquarters at Pine Bluff, Arkansas. As a result of the conversion of the Pine Bluff Hump Yard from a manual classification yard to a fully automated classification yard, with the installation of a Hump Control Process System, an additional 16 miles of track on the Claimants' territory required bonding and maintenance, with the addition of 42 distance to couple circuits and new clearance track circuits, two new DTC cabins, eight new shove lights and track circuits and 14 additional wheel detectors. The changeover was completed on March 31, 2004, and a UTU Retarders Operator was eliminated due to automation.

The Organization asserts that as a result of the additional signal equipment, the Claimants' territorial limits were materially increased, within the meaning of Rule 32, and that their positions should have been reclassified as Interlocking Repairmen, pursuant to Rule 1-H, and re-advertised for seniority choice, and Claimants should have been permitted to exercise their displacement rights under Rule 58. The Carrier denied the claim on the ground that because there was no increase in the mileposts of the Claimants' territory, the territory had not been materially increased, and Rule 32 did not apply. The Carrier specifically asserted that Rule 32 does not cover a mere increase in unit count or amount of equipment maintained, without the addition of new territory.

Rule 32 provides, in relevant part:

"When a change is made in the location of a signal maintainer's headquarters or when a signal maintainer's territorial limits are materially increased, or when the starting time is changed more than two (2) hours or when one or both of the rest days are changed, the position will be re-advertised as a new position when so requested by the incumbent through the local chairman. Such request must be in

writing and made within twenty (20) calendar days from date of change.”

The track mileage maintained by the Claimants was increased by 16 miles due to the placement of additional signal equipment rather than due to the construction of additional miles of track or an increase in mileposts within the Claimants’ territory. Two decisions of the Third Division already stand for the proposition that an increase of equipment to be maintained within the geographic limits of a Signal Maintainer’s territory, without an addition of mileposts, is not an increase in “territorial limits” within the meaning of Rule 32. As stated in Award 36969, where the amount of equipment to be maintained increased but the miles of track actually decreased:

“It is manifest that none of the listed conditions precedent [in Rule 32] occurred, that would have triggered the contractual requirement of re-advertising under the above-quoted language of Rule 32. Indeed, the territorial limits of the Claimant’s territory were not materially increased but rather shortened. Under the contract construction principle of ‘inclusion unius est exclusion alterius,’ we must conclude that if the contracting parties had intended to list a fourth condition precedent, i.e., additional equipment, they would have done so expressly. The Board declines the invitation to amend Rule 32 to include that condition under the guise of an interpretation.”
(Emphasis added)

The Board concurs with the reasoning and result in Award 36969. (See also Third Division Award 36941, where the Board held that an increase in “unit count” was not a material increase in territorial limits under Rule 32.) The term “territory” generally refers to a geographic area or region, and there is no evidence that the parties intended any other meaning of the word. The territorial limits of the Claimants’ territory remained unchanged, despite the placement of additional signal equipment that indeed may have increased the amount of work required of the Claimants. However, the parties agreed in Rule 32 on only four conditions that would prompt re-advertising: A change in the location of the Signal Maintainer’s headquarters, a material increase in a Signal Maintainer’s territorial limits, a change of more than two hours in starting time, or a change of one or both of the rest days.

The Board has no power to modify the parties' Agreement to add an additional condition.

The Organization also contends that with the addition of the new track circuits and equipment, the Claimants' positions should have been reclassified as Interlocking Repairmen, pursuant to Rule 1(H) which states:

"Retarder Yard Maintainer: An employee assigned to repairing and maintaining a retarder yard equipped with radar or computer control of retarders and requiring at least a General Radio License. Maintainers of retarder yard not covered by the first sentence of this section will be classified as Interlocking Repairmen." (Emphasis added)

However, Rule 1(K) describes the classification of Signal Maintainer as follows:

"Signal Maintainer: An employee assigned to perform work generally recognized as signal work on an assigned district. Signal maintainers with an assigned district will not be required to perform construction work requiring an appreciable amount of their time."

The Organization bears the burden of proving that the work in question is exclusively that of the Interlocking Repairman classification. (See Third Division Award 26033.) However, the Organization failed to prove that the addition of the new equipment imposed any duties that are reserved exclusively to the Interlocking Repairman classification, and therefore failed to meet its burden of proof that reclassification was required by Rule 1(H).

For these reasons, the claim is denied.

AWARD

Claim denied.

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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 2nd day of February 2009.