

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, Claimant T. J. Salcido was assigned as an Assistant Foreman on Gang 7040, on Roster 8503. On May 29, 2005, the Organization filed a claim on the Claimant's behalf in which it contended that the Claimant was performing work that was previously done by a Signal Foreman on Gang 7603, on Roster 8503. The Organization alleged that the Carrier abolished Gang 7603 and then added several positions to Gang 7040 – a pre-existing gang – including the position of Assistant Foreman. It argued that the Carrier's action was in direct violation of the Parties' Agreement, especially Rule 56, which provides:

“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 Organization further maintained that the Claimant was working some distance from the Foreman of his gang and, therefore, was not under the direction of a Signal Foreman as specified in the description of “Assistant Signal Foreman.”

The Carrier denied the claim on July 19, 2005. It dismissed the Organization's contention that it had violated the Agreement. Rather, the Carrier stated, it merged Gang 7603 with Gang 7040, in which the Claimant is now an Assistant Foreman who is required to report to his supervisor – the Gang Foreman. The Carrier further argued that there is nothing in the Agreement that prevents the Carrier from merging Gangs and, because the merged Gang already had a Foreman, there is nothing in the Agreement that compels the Carrier to add an additional Foreman.

The Organization appealed the Carrier's denial on August 3, 2005. It reiterated its position that the distance between the Claimant and his Foreman and the infrequency of communication between them more than supported the

Organization's position that the Claimant was performing Foreman's work in supervising the Signalmen working with him.

In its September 30, 2005 denial of the Organization's appeal, the Carrier reaffirmed its position, and asserted that when Zone Gang 7040 is split to perform construction duties at different locations, the ultimate responsibility for allocation of the work and accountability for the entire gang rests with the Foreman. Further, the Carrier noted that the Manager of Signal Construction confirmed that whenever the gang is split in that manner, "it is the mutual responsibility of Signal Foreman Rhines and Assistant Foreman Salcido to remain in daily contact."

The claim was conferenced on the property on November 8, 2005, after which it remained in dispute. It is thus properly before the Board.

The intention of the language of Rule 56 is clear. It prohibits the Carrier from abolishing a position – for example a Foreman's position – and then re-establishing a position to do the same work – for example an Assistant Foreman's position – in order to enable the Carrier to pay the incumbent employee less than the abolished position. However, in this case, the Organization offered no persuasive evidence that the Carrier violated Rule 56.

On the contrary, as the Carrier insisted, there is no Rule preventing it from merging two gangs into a single gang. Moreover, except for the Organization's (and the Claimant's) assertions, there is no showing that the Claimant in fact has the responsibility associated with a Foreman's position. Rather, in the course of the correspondence on the property, the Organization acknowledged that authorization of pay and other responsibilities are reserved to the Foreman alone.

After thorough consideration of the on-property record, the Board finds no basis upon which to sustain the instant claim.

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**Award No. 40350
Docket No. SG-39548
10-3-NRAB-00003-060336
(06-3-336)**

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 1st day of March 2010.