

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41626
Docket No. SG-41599
13-3-NRAB-00003-110231**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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. Wilcox, for 8 hours at the Interlocking Repairman’s rate of pay, account Carrier violated Rules 26 and 80 when it allowed a junior employee to relieve the position instead of the Claimant denying him the work opportunity. Carrier’s File No. 1532758. General Chairman’s File No. N 26 879. BRS File Case No. 14487-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 Claimant was the senior employee. The Organization alleges that when the Interlocking Repairman (IR) position at the North Platte classification yard was relieved on January 4, 2010, the Carrier violated Rule 26 and ran around the Claimant permitting the junior employee to work relief on the position. The lost opportunity of higher rated pay to the senior employee (Claimant) violated Rules 80 and 26. Rule 80 states that, "an employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss." Rule 26 (Relieving Foreman and Maintainers) states in relevant part:

"When Signal Maintainers or Signal Maintenance Foremen are off for periods that exceed one week in duration, they will, if relieved, be relieved by the Relief Signal Employee; and if not available, the senior qualified employee of Class 1 assigned to the Signal or Maintenance Gang."

The Organization takes the position that the IR was off and the Claimant was the senior available employee desiring the position. Certainly, the Claimant's signed affidavit indicates that he preferred the relief position and it was assigned to the junior employee.

The Carrier denies all elements of this claim. It asserts that (1) Rule 26 is inapplicable to IR positions and these circumstances (2) the IR position was not relieved and (3) the junior employee worked his regularly assigned Signalman position on the date alleged. The Carrier contends that the claim has no merit under the facts at bar.

As stated in numerous prior Awards, the Organization has the burden of proof. In this instance, the Board finds assertions which establish a prima facie case, but which are thereafter rebutted by the Carrier. The Organization asserted the Claimant's entitlement to eight hours at the IR rate of pay based on the above Rules. However, when the Carrier rebutted the applicability of Rule 26, no additional evidence of probative value was presented. The Carrier's February 12, 2008 response was not on point with Rule 26. Rule 26 specifically states "if relieved" and the Carrier

presented the statement of Manager Signal Maintenance R. Moritz that the Claimant was on his rest day and was not relieved by the junior employee. No further proof was forthcoming from the Organization to substantiate the allegation. Additional proof from the Carrier including work records and payroll records do not support the Organization's claim. They are not shown to be either incorrect, or inapplicable.

In short, the Organization bears the burden of proof for the claim at bar. The Board studied the cited Rules and finds that they not only are inapplicable to the facts at bar, but also that the record is bereft of evidence which supports the claim. Accordingly, the claim must be denied for lack of the requisite substantiation of the asserted allegations that the position was relieved and that the cited Rules were 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 24th day of April 2013.