

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42560
Docket No. SG-43133
17-3-NRAB-00003-150355**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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 Z.A. Crandall, for the abolishment of his Zone Construction Electronic Technician/Inspector (ETI) position and the reestablishment of said position with headquarters at Saint Paul, Minnesota, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 26, 30, 34, and 44, when it arbitrarily abolished the Claimant’s ETI position headquartered at Saint Paul, Minnesota, and bulletined it as a Zone Construction (ETI) position for the purpose of evading application of rules of the Agreement. Carrier’s File No. 1604060. General Chairman’s File No. N 44 1211. BRS File Case No. 15165-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.

This is a time and mileage claim. It involves the following CBA Rules:

“RULE 10 – OVERTIME (SUBJECT TO HOURS OF SERVICE ACT)

Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period will be computed on actual minute basis and paid for at time and one-half rate, the regularly assigned eight (8) hour work period will be paid at straight time rate. Time worked after sixteen (16) hours of continuous service will be computed on the actual minute basis and paid for at the double time rate until employee is released for eight (8) consecutive hours time off duty.

For purposes of computing sixteen (16) hours of continuous service, as referred to herein, actual time worked will be counted from time on duty until relieved for eight (8) consecutive hours time off duty. Employees will not be required to suspend work during their regular hours for the purpose of absorbing overtime.

It is understood that nothing in this rule requires that the Carrier retain an employee on duty at punitive rate of pay.

In the application of this rule the starting time of new employees temporarily brought into the service in emergencies will be considered as of the time they commence work or are required to report for work.

Work in excess of forty (40) straight time hours in any work week will be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated.

Employees worked more than five (5) days in a work week will be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work week except where such work on the sixth and seventh days is performed by an employee due

to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated.

There will be no overtime on overtime; neither will overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays, be utilized in computing the forty (40) hours per week, nor will time paid for in the nature of arbitraries, or special allowances such as attending court, investigations, coroner's inquest, boards of inquiry, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of payment for such hours, or where such time is now included in computations leading to overtime.

Where gang men are required to work overtime, the senior man in a class in the gang will be given preference to such overtime work.

RULE 11 – SECOND AND SUBSEQUENT MEAL PERIODS

Signal employees can be required to work overtime without an opportunity for a second meal period.

When signal employees working 8 hour days are required to work more than ten (10) consecutive hours without an opportunity to eat, they will be paid an arbitrary of one (1) hour at the overtime rate in lieu of a second meal period and cost of such meal. When signal employees working 10 hour days are required to work more than twelve (12) consecutive hours without an opportunity to eat, they will be paid an arbitrary of one (1) hour at the overtime rate in lieu of a second meal period and cost of such meal. An additional one (1) hour arbitrary will be paid for every 5 hour period thereafter.

RULE 13 – ROAD SERVICE

- A. Employees performing service requiring them to leave and return to their home station on the same day (within 24 hours from regular starting time of their assignment) will be paid continuous time exclusive of established meal period from time reporting for duty until released at home station. Straight time will be allowed for all straight time work; overtime for all

overtime work and straight time for all traveling or waiting. Employees riding on or operating track motor cars or trucks or required to be responsible for Company tools and/or materials while traveling will be considered as performing work as referred to in these rules and will be compensated accordingly.

- B. Employees sent away from home station and held out overnight will be allowed actual time for traveling or waiting during the regular working hours; in addition, travel or waiting time outside of regular hours will be paid for at the straight time rate, until the employee is released from duty at location where suitable eating and sleeping accommodations are available.

If meals and lodging are not furnished by the Company, actual necessary expenses will be allowed until employee is released at his home station.

A relief employee required to travel between two work locations (other than between work locations within the same terminal), in order to provide relief on assigned rest days will be compensated for actual time traveling between such work locations with a maximum of eight hours at the straight time hourly rate of the position on which relief is to be furnished.

- C. Time spent in traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday will be paid for at the straight time rate. Each man will be paid the amount of travel time from one point to another based on the mode of transportation offered by the Carrier, regardless of how any employee actually travels from one point to the other.

RULE 26

. . . zone gangs may be at any location performing any agreement work.

Section 4 of Appendix EE provides that: ‘Commencing with the effective date of this agreement, the Carrier, at its discretion, may begin converting existing Electronic Technician (ET) or Signal

Inspector (SI) positions into an ETI position without abolishing and re-bulletining positions.”

Section 7 of Appendix EE states:

“All new vacancies for ETI positions being created, other than through conversion, will be bulletined pursuant to Rule 41 of the Schedule agreement.

RULE 44 – ESTABLISHED POSITIONS

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

RULE 61 – PRIVATE AUTOMOBILES

When employees are requested and are willing to use private automobiles for Company-use, an allowance will be made at the established automobile mileage allowance paid by the Company to its employees.

RULE 65 – LOSS OF EARNINGS

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.”

The key Rules involved in this case are Rules 26 and 44. The Organization says that the Carrier abolished a position, and created another one, covering exactly the same work, simply to avoid paying the proper amount under the CBA. Thus, they say, Rule 44 was violated. The Carrier says that Rule 26, and the Appendices, allow them to do what they did.

It is clear, from all of the material and arguments presented to this Board, that the Carrier has the right to establish Zone ETI's.

AWARD

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 6th day of March 2017.