

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43184
Docket No. SG-44045
18-3-NRAB-00003-160129**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 Railroad:

Claim on behalf of B.M. Hoolihan, for the re-advertisement of his cancelled Signalman’s position, 50 hours at his straight-time rate of pay, \$616.00 for mileage and \$30.00 for meals, and compensation for any additional time lost or expenses incurred, account Carrier violated the current Signalmen’s Agreement, particularly Rules 30, 39, 43, 45, and 65, when it failed to properly advertise and assign the Claimant to a Signalman position or provide him with written notice five days in advance of abolishing his position. Carrier’s File No. 1618463. General Chairman’s File No. S-30, 39, 43, 45, 65-1423. BRS File Case No. 15290-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 Organization filed the instant claim on the Claimant's behalf, alleging that the Carrier violated the parties' Agreement when it failed to properly advertise and assign the Claimant's Assistant Signalman position as a Signalman position and failed to provide the Claimant with five days' advance written notice before abolishing his position. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant's Assistant Signalman position should have been re-bulletined as a Signalman position in accordance with Rule 30 and past practice when the Claimant achieved two-year status, because the Carrier's cancellation of this position was improper and unnecessary, because there is no cancellation provision in the Agreement, and because the requested remedy is proper.

The Carrier contends that the instant claim should be denied in its entirety because the Carrier is not required to maintain positions that it does not need, because the Organization has failed to prove that an Agreement violation occurred, and because there is no merit to the remedy demand.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it did not assign the Claimant to a signalman position or provide him with written notice five days in advance of abolishing his position. Therefore, this claim must be denied.

The record reveals that at the time that this took place, the Carrier did not have a need for the additional signalman's position in the work group. The Carrier bulletined the position in compliance with Rule 30; but since there was not a need for the position, the Carrier exercised its right and cancelled that position.

Since the Carrier did not need the position, it has a justifiable right to cancel the bulletin. The Carrier has a right to direct the workforce and decide which positions are necessary to operate its business. In this case, the Carrier did not violate the Agreement when it determined that it no longer needed another signalman position and cancelled the bulletin.

Since the Organization bears the burden of proof in all cases of this kind and failed to meet that burden in this case, the Board has no choice other than to deny the claim.

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 30th day of May 2018.