Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44827
Docket No. SG-46768
23-3-NRAB-00003-210348

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation:

Claim on behalf of C.R. Huston, for eight hours at the difference of pay between Signal Maintainer and Electronic Technician's rate, for a total of $30.32, account Carrier violated the current Signalmen's Agreement, particularly Rule 4-G-2(a), on September 17, 2019, when it denied the Claimant the Electronic Technician's rate of pay for performing the higher classification of work at the guaranteed rate of pay for performing test number 27, train inspection devices. Carrier's File No. 19-68242. General Chairman's File No. C-19-CSX-086-5. BRS File Case No. 16400-CSX(N). NMB Code No. 72."

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 times relevant to this case, Claimant C. R. Huston was a Signal Maintainer headquartered in Utica, New York. On September 17, 2019, the Claimant was directed to perform a bi-weekly test on a defect detector on his assigned territory. The Organization submitted the instant claim on November 7, 2019, contending that the Carrier violated Rule 4-G-2 when it did not pay the Claimant the Electronic Technician rate of pay for the day he performed the test on the defect detector, contending that such work has historically been performed by ETs consistent with the description of ET duties in the applicable agreement. Attached to the claim were statements from ETs, and logbooks recording their tests of defect detectors on multiple subdivisions. The claim alleged that work on train inspection devices takes a higher level of understanding to know how the advanced technology in the equipment works, and it requested that the Claimant be paid the difference between the Signal Maintainer rate and the ET rate for the day, totaling $30.32.

The Carrier denied the claim, stating that the Claimant is qualified to perform work on defect detectors, and that the task is part of his assigned duties on his territory. It asserted that the work is not exclusive to the classification of ET, and that is may be assigned to and be performed by either classification. The Carrier stated there was no proof that the work has been assigned to ETs to the exclusion of all other signal employees, or that the work was not within the scope, abilities and responsibilities of a qualified Signal Maintainer. It asserted that the agreement provisions cited in the claim indicate that either classification could do testing on defect detectors, and that there was therefore no requirement to pay a Signal Maintainer a higher rate for performing such work. The Carrier also denied that the statements and other documentation established that the work in question is exclusive to the classification of ET.

The Organization submitted an appeal, again stating that the work in question has traditionally, and until recently, been performed by ETs. It stated that, while such work may occasionally be assigned to other classifications, that right is not unfettered, and that the intent of Rule 4-G-2 is to allow temporary assignment of such work while ensuring that the value of the work is not diminished. The Organization referred to statements from Carrier managers provided in connection with similar claims as confirming that Maintainers have only recently assumed the job of testing defect detectors. It asserted that the Carrier therefore acknowledged a change in working conditions regarding the responsibilities of Maintainers and ETs. The Organization also submitted additional statements confirming the authenticity of the logbooks, which are kept at the location of the detectors, as well as statements from Maintainers which indicated such work has always been done by ETs. Additionally, it submitted documentation indicating that the Carrier had in the past paid Maintainers the ET rate

for taking a trouble call on a failing detector and for performing testing and maintenance on a defect detector, and that ETs are first on the list to be called for trouble on detectors.

The Carrier denied the appeal, again maintaining that no violation of the cited agreement had been established. It stated that the Organization had failed to prove conclusively that the work of repairing or testing defect detectors has traditionally and historically been performed by the higher rated position, or if it had been performed by Maintainers, that they were compensated at the higher rate under Rule 4-G-2. The Carrier stated that a few examples of Maintainers being paid at ET rate were not proof of a historical practice pertaining to work performed on defect detectors. It cited prior awards which found that payment of the higher rate for other tasks was not required under Rule 4-G-2 when the work was within the description of multiple classifications of signal employees. It also noted that Appendix E of the prior agreement between Conrail and the Organization referred to multiple classifications of employees performing such tests.

The Carrier stated that call lists indicating that ETs should be called first for trouble with a detector may indicate a desire in certain instances to prevent train delays, but that they do not indicate there has been any exclusion of Maintainers from working on detectors if ETs are not available. It also cited the classification rule pertaining to both positions as including testing, maintenance and repairs on signal equipment on an assigned territory, and it concluded that, as Maintainers are being assigned work within their classification and qualifications, they are not entitled to the higher rate of pay for performance of such work.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the Carrier is attempting to disadvantage the Claimant by failing to compensate him at the higher rate of pay for performing work which falls under the ET classification. It states that the Carrier recognized in the past that employees performing work on defect detectors were entitled by the language of Rule 4-G-2 to compensation at the higher rate, but that the Carrier has violated that agreement by declining to pay the appropriate rate for the work in question here.

The Organization asserts that the Carrier has failed to properly rebut or overcome the substantial evidence provided in support of the claim, nor has the Carrier provided evidence to support its position. The Organization states that the Carrier has focused on whether a Maintainer is qualified to do the work, but it maintains that the issue is not qualification, but rather the appropriate classification of the work, which was established by the record to belong to ETs.

The Organization cites prior awards which have ruled on the issue of employees being paid the higher rate when required to perform duties associated with the higher rated position, and which have held that it is not necessary for an employee to take over and perform all of the duties of a higher rated position in order to be entitled to pay at the higher rate. It also cites prior awards for the principle that clear and unambiguous agreement language must be applied as written, and it asserts that there is no need to look beyond the language of Rule 4-G-2 to determine that the Claimant is entitled to pay at the higher rate for his entire tour of duty when he performed duties for which the higher rate was applicable. The Organization contends that the Carrier failed to produce evidence or documentation to support the denial of the requested payment, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains its position that no violation of the cited agreement has been established. It reiterates its contention that both job classifications can perform the work in question under the applicable agreement provisions, adding that the Organization conceded during the on-property handling that Maintainers may perform tests on defect detectors. It states that the Organization's efforts to establish a past practice regarding the work being performed by ETs is off the mark in light of the plain language, which cannot be rewritten through the arbitration process.

The Carrier also cites prior awards for the principle that, because both positions can perform tests on detectors under the agreement, the work is not exclusively reserved to ETs, which it asserts the Organization must prove to prevail. It states that the same issue involving the interpretation of Rule 4-G-2 has already been addressed in its favor in prior on-property awards, and it asserts that the same outcome should obtain here. The Carrier posits that the Organization has not met its burden of proving an agreement violation, and it concludes that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we are unable to find that the Organization

has established a violation of the cited agreement. The applicable agreement provisions provide as follows:

Rule 4-G-2(a)

An employee, who during a tour of duty performs work for which more than one rate of pay is applicable, shall be paid for the entire tour of duty at the highest rate of pay applicable to any of the work performed. An employee who performs service temporarily in a lower rated position shall not have his rate reduced.

Classifications

Electronic Technician

An employee assigned to perform maintenance, adjustment, replacement, repair and testing of wayside electronic equipment and provide technical support to other classifications in the installation, testing, maintenance, adjustment and repair of electronic equipment and systems covered by the scope of this agreement. Electronic Technicians may perform adjustment, testing, maintenance and repair of electronic equipment other than signal equipment as may be assigned to them.

Maintainer

An employee assigned to perform both signal and communication inspection, testing, maintenance, installation, adjustment and repair work covered by this agreement within an assigned territory; or signal and/or communication construction work which involves installation or major revision of signal and/or communication equipment and control systems.

It is apparent, in our view, that under the classification rule, either ETs or Maintainers may perform tests on defect detectors, as those devices are clearly covered in the broad description of a Maintainer's work and in the more detailed description of an ET's work. While the record certainly indicates that ETs have performed the work in the past, perhaps even most of it, the agreement language does not indicate that they have a superior right to perform it. We do not believe the evidence of past practice can

override the plain language of the agreement on that issue. See, e.g., NRAB 3rd Division Award No. 39870, which observed:

> **"The difficulty with the proffer of evidence by the Organization is that, even if Signal Inspectors have performed the testing at issue, such work is not reserved only to Signal Inspectors. Rule 2 is clear and unambiguous that both classes of employees may perform testing work."**

Because the work in question falls with the classification of work for a Maintainer, we do not believe a Maintainer is entitled by Rule 4-G-2 to a higher rate for performing such tasks. A similar, although not identical issue, was raised in NRAB 3rd Division Award No. 33602. In that case, the Organization argued that, because the work in question there could be performed by more than one class of signal employee, whenever that work was performed, the Carrier was obligated by Rule 4-G-2 to pay whoever performed it at the highest rate. The board rejected that argument, stating:

> **"This is not a correct reading of the meaning of Rule 4-G-2. That rule is designed to apply to cases where an employee may perform work which must be performed by a higher rated classification. It further provides that if part of a tour of duty [is] spent performing lower rated work and part is spent performing higher rated work, then the pay rate for that entire tour shall be at the higher rate.**
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> **As we read Rule 4-G-2, it does NOT provide that an employee who performs work that is clearly within his classification is entitled to be paid at the rate of another classification simply because the work could also have been done by employees from that other classification." (emphasis original)**

In this case, we concur with the finding in Award No. 33602 that Rule 4-G-2 does not provide for payment of a higher rate of pay to an employee who performs work within his own classification. It is fundamental that the Organization bears the burden of proving that a challenged action is contrary to the applicable agreement provisions, and we find that the evidence presented here is insufficient to meet that burden. Therefore, we must 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 21st day of December 2022.