

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45362
Docket No. SG-47735
25-3-NRAB-00003-230104**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of B. Pelehowski, for 2.5 hours at the difference in pay between Skilled Signal Maintainer and CDC Electronic Tech Level 3; account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 14, when, on March 14, 2022, it required the Claimant to perform the duties of a higher-rated position but failed to provide compensation at the higher rate of pay as outlined by the Agreement. Carrier’s File No. 1772570, General Chairman’s File No. S174-1,14-261, BRS File Case No. 5763, NMB Code No. 308 - Contract Rules: Pay/Allowances/Penalty.”

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 time this dispute arose, the Claimant was assigned as a Signal Maintainer in the Carrier’s Signal Department. On March 14, 2022, the Claimant responded to a trouble call at the Woodland Junction. According to the Organization, upon completion

of the work, the Claimant was assigned to close the trouble ticket for the work. The Organization asserts that the closing of trouble tickets is the work of C.D.C. Electronic Technicians – a classification that receives higher compensation than Signal Maintainers. The Claimant seeks the difference in pay between the two positions.

We start first with the specific claim before us. The claim is limited to one incident that occurred on March 14, 2022 when the Carrier “required the Claimant to perform the duties of a higher-rated position” “[T]he duties” the Claimant was required to perform consisted of closing a trouble ticket for the Signal Maintainer work he performed. The closing of a trouble ticket is performed through use of a phone app.

In the Carrier’s May 11, 2022 letter, the Carrier asserted that “[t]he work only took a few minutes to complete.” Carrier Exhibit B2 at 2. The Organization countered that assertion in its July 27, 2022 letter, asserting that “there is a twenty-seven (27) page document to review just to make sure the information is put in the app correctly.” Organization Exhibit 1 at 32. At argument before this Board, the Carrier asserted that the work took less than 15 minutes to complete.

By the nature of the claim, this is a “one-off” incident that occurred on March 14, 2022. We offer no opinion on whether the closing of trouble tickets can be assigned to Signalmen on a permanent basis. That was not what this claim is about and it cannot be expanded – by either party. If the parties need to litigate a permanent assignment of such duties, that will have to be at some other time.

In this case, limited to what is before this Board – a one-time incident on March 14, 2022 – we find that the work Claimant performed closing a trouble ticket that day was de minimis. According to the record, the work Claimant performed that day took several minutes to complete.

We recognize that, as the Organization points out, there are awards that reject the de minimis doctrine. However, those awards are not universal. See e.g., Third Division Award 35818 (recognizing de minimis or incidental work to deny relief); Third Division Award 30968 (“the work performed by the Trainmaster was de minimis and incidental to his job duties”); Second Division Award 13188 (“There is no evidence that this took other than a brief period of time [t]hus, even though the work in issue may well be outside the scope of managerial responsibility, it falls squarely within the de minimis principle”); Second Division Award 12238 (upholding use of the de minimis doctrine); First Division Award 27373 (“... even if there was an available Locomotive

Engineer, the instant move was a de minimis violation of the Agreement either is viewed as a permissible exception or does not create an injury”).

Under the facts of this particular case, even if outside of the Claimant’s duties, the work performed by Claimant on March 14, 2022 was de minimis.

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 19th day of December 2024.

**LABOR MEMBER'S DISSENTING OPINION TO NATIONAL RAILROAD
ADJUSTMENT BOARD THIRD DIVISION AWARD NO. 45362**

(REFEREE EDWIN H. BENN)

In this award the Majority found this case to be a “one-off” on its way to finding that the high-rated work assigned to the Claimant was de minimis. The record and statement of claim indicated that this was not a reservation of work claim, but rather a claim for the higher rate of pay under Rule 14. The de minimis principle was improperly applied, as the Awards relied on by the Majority dealt with scope and reservation.

Third Division Award No. 35818 involved the abolishment of a job and a claim for a scope-rule violation; the Board in that case found the tasks remaining from the abolished position to either not exist or be incidental to the work of other positions.

In *Third Division Award No. 30968* the dispute involved assignment of work to a non-covered employee and the Board found the minor work to be incidental to the work performed. The same basis was used in *Second Division Award No. 13188*.

Similarly, *Second Division Award No. 12238* also dealt with a reservation of work and dealt with a jurisdictional dispute between two crafts for which the Board found the work assigned to the other craft to be de minimis.

Lastly, *First Division Award No. 27373* only notes the de minimis argument as raised by Carrier and ultimately the decision of the Board was made on a lack of evidence to show an available employee.

The de minimis argument was improperly applied to the dispute involved in this case. More importantly, this was a lead claim for a multitude of disputes involving the system-wide assignment of the higher-rated work to the lower-rated positions. The Majority understood this underlying issue and noted that it would not offer an opinion on the permanent assignment and whether this is a violation. As such, this Award does not resolve the underlying issue and cannot serve as a precedent in future claims involving similar disputes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brandon Elvey", written over a horizontal line.

Brandon Elvey
Labor Member