

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25243
Docket Number SG-24896

Marty E. **Zusman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Seaboard System Railroad
(Louisville & Nashville Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad Company:

On behalf of Leading Signal Maintainer Wayne Simmons, account not called to perform Leading Signal Maintainers work that is assigned to him. The signal work in question was performed by the Operator at Osborn Yard from 1:00 a.m. to 5:00 a.m. on September 12, 1980. [Carrier file: G-265-Y G-391

OPINION OF BOARD: The instant dispute was initiated on October 30, 1980, by the Organization on behalf of Mr. Wayne Simmons, a Leading Signal Maintainer, for alleged violation of the Agreement by the Carrier. The Organization contends in letters of January 29, 1981, and April 22, 1981, that Carrier violated the Scope Rule of the Signalmen's Agreement and Section A, Part 2 of the Memorandum Agreement pertaining to Strawberry Yard. Specifically, the Organization maintains that after a train derailment on **September** 12, 1980, the Operator at **Osborn** Yard engaged in tests of the CTC **Machine** which, within the Scope of the Agreement was work assigned to the Signalmen's ranks and by Memorandum Agreement should have been performed by the Leading Signal Maintainer who was available, but not called.

During the progression of this claim on property, the Carrier by letter of March 2, 1981, stated that "complete checks were made in the field and no checks were made on the machine, and the operator performed no signal work. Any work by Operator was work normally performed by him...". In further response to the Organization, the Carrier by letter of May 21, 1981, stated that 'The Operator at **Osborn** performed no work that exclusively belonged to the claimant'. Carrier maintained that in lining the north and south signals after the derailment it had not performed signal work. After further appeal by the Organization up to and including the highest Carrier Officer designated to hear such, this case is now properly before the Third Division of the National Railroad Adjustment Board.

In the instant case the question is whether such work done by an Operator is a test of the machine which is work assigned to the Signalmen's ranks. The National Railroad Adjustment Board has held repeatedly that the weight of the evidence for any claim is the responsibility of the moving party (Third Division Awards 13691, 19506). In the mind of the Board there is nothing

in the record as handled on property to provide sufficient evidence of probative value to either establish that such work has historically been exclusively **performed** by Signalmen or that such test was an integral part of Signalmen's work within the prevailing Agreements. The evidentiary data as developed by the Organization on property does not establish that **an** Operator performed the duties assigned to the Leading Signal Maintainer by the Signalmen's Agreement **or** the Memorandum Agreement pertaining to Strawberry Yard. The burden of proof is on the moving party and as such, this Board denies the claim since the burden has not been met here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and **Employes** within the *meaning* of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

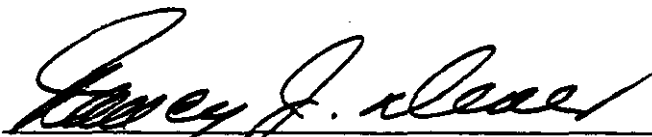
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.

