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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27983
Docket No. SG-27493
89-3-86-3-751

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen and the Consolidated Rail Corporation (CONRAIL):

On behalf of J. Reynolds, assistant foreman, E. Santora, maintainer test, J. Carney, J. Hoffnagle, N. Conklin, L. Gatlin, R. Holmes, E. Englebrecht, P. T. Williams, A. Houston, P. Bucci, M. Scott and L. Bradly, signalmen, headquarters, Brown, working a four day ten-hour week.

This claim is for the violation of the Scope of the Agreement with Conrail and the Brotherhood of Railroad Signalmen. Protect Management personal (sic) working together on the following dates with small tools, wire and Flag Eyes removed old signal circuits and added new ones at various locations in Gloucester, N.J., on the Vineland Secondary.

March 5, 1985:

D. Handler, Project Management working at Essex St. 10 hours.

C. Welton, Project Management working at Cumberland St. 10 hours.

After the completion of the regular tour of duty Project personal (sic) noticed the improper operation of the automatic protection and remained until 7:30 PM to make corrections. Signal personal (six) were sent home and did not work at Essex or Cumberland Streets.

Claim: Assistant Foreman J. Reynolds and Signalmen E. Englebrecht be paid 10 hours each at their regular rate and 2 hours each plus 1 hour for meal at one and one-half times their rate.

March 7, 1985:

D. Handler, Project Management working at Essex Street. 10 hours.

C. Welton, Project Management working at Monmouth St. 10 hours.

Claim: Signalmen J. Hoffnagle and N. Conklin be paid 10 additional hours each at their regular time rate.

March 11, 1985:

D. Handler, Project Management working at Essex St. 10 hours.

C. Welton, Project Management working at Chambers St. 10 hours.

Claim: Signalmen (sic) L. Gatlin and R. Holmes be paid 10 additional hours each at their regular time rate.

March 12, 1985:

L. Kirkoff, Project Management working at Monmouth St. 10 hours.
D. Scutt, Project Management working at Monmouth St. 10 hours.
C. Welton, Project Management working at Cumberland St. 10 hours.

Claim: Signalmen P. T. Williams and A. Houston be paid 10 additional hours each at their regular time rate.

March 13, 1985:

D. Handler, Project Management working at Cumberland St. 10 hours.
C. Welton, Project Management working at Powell St. 10 hours.
L. Kirkoff, Project Management working at Monmouth St. 10 hours.

Claim: Signalmen P. Bucci, M. Scott and L. Bradley be paid 10 additional hours each at their regular time rate.

March 15, 1985:

C. Welton, Project Management working at Powell St. 10 hours.
D. Handler, Project Management working at Powell St. 10 hours.

Claim: Assistant Foreman J. Reynolds and Maintainer Test E. Santora be paid 10 additional hours each at their regular time rate. Carrier file SD-2232."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Pay claims were filed by the Organization for seven (7) dates in March of 1985, on grounds that the Carrier was in violation of the Agreement Scope Rule when project management personnel did covered work. The work consisted in removing old signal circuits and adding new ones at various locations in the Gloucester, New Jersey area on the Vineland Secondary. The claims were denied by the Carrier. When they were conferred with the highest Carrier officer designated to hear them, it was ascertained that while project management personnel "spent the vast majority of their time performing duties related to their supervisory function" on the Vineland Secondary, these personnel nevertheless did do craft work. The argument by the Carrier, however, is that project management employees "did not do craft work for nearly

as many hours as were claimed." The first issue before the Board, therefore, is not whether the Scope Rule was violated, but the extent to which such took place. It is the claim of the Organization that management spent 110 hours cumulative, on the dates of March 5, 6, 7, 11 & 12, 1985, doing craft work. The record shows that when the Brotherhood served notice to the Third Division of the Adjustment Board it dropped claims related to March 6, 1985, and these will not, therefore, be considered by the Board. After search of its records, the Carrier responds that it could find only 32 cumulative hours for those dates on which management did craft work. The amount of work, per date, according to management is as follows: March 5th: 8 hours; March 6th: 10 hours (not considered here); March 7th: 5 hours; March 12th: 9 hours. No work was done by management personnel on March 11th according to the Carrier. The Organization does not respond to this specific rebuttal by the Carrier on property and the figures presented by the Carrier are, therefore, accepted by the Board. On the other hand, it is the specific contention of the Organization in its claim that on March 13th management personnel worked 30 combined hours on the Vineland Secondary doing craft work; and that it worked 20 hours on March 15th doing the same. In its handling of this claim on the highest level, the Carrier does not respond to claims for these dates. The Supervisor, C&S, however, on first level denied the claim for March 15th on grounds that the supervisors who allegedly did craft work on these dates were either not working at the alleged site and/or were occupied doing something else (i.e. working on the following week's events). The Organization does not respond to this.

As far as can be determined from the record, therefore, the days and hours in question are as follows:

<u>Date of Violation</u>	<u>Number of Hours Per Date</u>
March 5, 1985	8
March 7, 1985	5
March 12, 1985	9
March 13, 1985	30

The Carrier argues that in either case no relief is proper with respect to the instant claims since all Claimants in question were working and they suffered no monetary loss. In line with arbitral precedent dealing with the issue of damages, the Board must disagree. The Carrier here not only admitted that the Agreement was violated by its supervisory forces, but it stated that one reason for this, among others, was because "of the deadline to complete the project...". In Third Division Award 27982 the Board recently quoted with favor Third Division Award 20020 to the effect that "(a) violation of a contract... if persisted, causes damages to the injured party..." and under those conditions relief is proper (See also Third Division Awards 17973, 20311, 23571 inter alia). The fact that the infraction was repeated over a series of dates suggests that the violation of contract "persisted." Specific relief granted is as follows. Assistant Foreman J. Reynolds and Signalmen E. Englebrecht are to be paid four (4) hours each at regular rate for the March 5, 1985, violation. Signalmen J. Hoffnagle and N. Conklin are to be each paid two and a half (2 1/2) hours at regular rate for the March 7, 1985, violation. Signalmen P. T. Williams and A. Houston are to be each paid four and a half (4 1/2)

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hours at regular rate for the March 12, 1985, infraction. Signalmen P. Bucci, M. Scott and L. Bradley are to be each paid ten (10) hours at regular rate for the March 13, 1985, infraction.

A W A R D

Claims sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.