

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (C&O) on behalf of Signal Maintainer J. C. Frye I. D. #2618563 of Local 136 of the Brotherhood of Railroad Signalmen that:

(a) Carrier did violate the current Signalmen's Agreement particularly Rule 25 (work outside of assigned hours) when on February 16, 1987 Carrier did allow or permit another signal employee from Big Sandy Jct. to perform work on the claimant's territory and did not attempt to call claimant. The Big Sandy Jct. maintainer was sent to the claimant's territory five different times throughout the day to perform the work on switches due to snow and ice.

(b) Carrier now be required to compensate claimant for twelve hours at the time and one half rate of his applicable rate of pay. This is actually less than that of five calls. Carrier file: 15-25 (87-27). G.C. file 87-18 CD."

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.

The significant events leading to this dispute began when a snow storm occurred on February 16, 1987, (a holiday), causing a buildup of excessive snow and ice on switches. This required the Carrier to call track and signal employees to clean the snow and ice from the switches.

Pursuant to Section 3, First (j) of the Railway Labor Act, as amended, notice was given to the Brotherhood of Maintenance of Way Employees of this Claim as a possible party of interest. That party has filed a statement with the Board which we have carefully considered in our deliberations.

The Board also notes that certain material and arguments have been advanced without proper exchange between the parties on the property. Accordingly, those elements have not been considered when arriving at our decision in this matter.

Simply stated, the Organization asserts that the Claimant was available for work on February 16, 1987, and that the Carrier did not produce evidence supporting its assertion that the Dispatcher attempted to call the Claimant. Therefore, the Carrier allowed another signal employee to perform work on the Claimant's territory. The employee who performed the work and the Claimant hold their seniority on the Huntington Seniority District. The work at issue was performed in the Ashland territory which falls in the Huntington Seniority District. While a number of issues and various ramifications of these issues have been pursued by both parties, the controlling question is whether or not the Carrier called the Claimant.

We find the Organization's position persuasive in this matter mainly because the Carrier on the property, after being challenged, did not offer any evidence that it did call the Claimant. Accordingly, we sustain Part (a) of the Claim. With respect to Part (b) of the Claim, we find from the record developed on the property that the work at issue totaled two hours not the claimed twelve hours. Therefore, in summary, Part (a) of the Claim is sustained and Part (b) of the Claim is sustained to the extent that the Claimant will be compensated for two hours of work.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.