

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33603
Docket No. SG-34864
99-3-98-3-565

The Third Division consisted of the regular members and in addition Referee Martin Henner 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 on the Consolidated Rail Corporation (Conrail):

Claim on behalf of K.S. Falls for payment of 22 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, Rule 5-A-1(h), and Appendix 'P', when it used a management employee to perform covered work on April 13 and April 16, 1997. Carrier's File No. SG-982. General Chairman's File No. RM3015-225-0897. BRS File Case No. 10695-CR.”

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.

The Claimant is a Signal Inspector who claims that on April 13, and April 16, 1997, craft work such as clearing signals, releasing time circuits and other work related

to signal testing, which under the Scope Rule of the Agreement was required to be assigned to Brotherhood of Railroad Signalmen employees, was instead performed by a Signal Supervisor. The Claimant states he was on the call list for such work, and was rested and available, and was not afforded the opportunity to perform such work. He claims 22 hours work at the time and one-half rate.

The Carrier has claimed that the Signal Supervisor worked on the days in question in a supervisory capacity only and has denied that the Supervisor performed any work covered by the Conrail/Brotherhood of Railroad Signalmen Agreement's Scope Rule. The Carrier further objects that the Organization and Claimant have not provided sufficient evidence of the alleged violation to meet their burden of proof.

Finally, the Carrier claims that, in the event the Board finds that the violation alleged by the Claimant has occurred, that the remedy sought, pay at the punitive rate is excessive. Payment for time not actually worked is not payable at the punitive rate in the absence of any agreement provisions providing for such payment.

As evidence to support the Claim, the Organization has submitted a handwritten, somewhat illegible document which stated that, on April 13, 14 and 15, 1997, from 7 P.M. to 7 A.M., the writer of the note was on a cut in at CP2 and had heard information over the speaker comline that led him to conclude that the Supervisor was at CP5 Chicago Line calling signals, releasing time, shunting tracks and working signal service tests.

This document is undated, and was signed with an illegible name, under which was written "signal maint" as a title.

No evidence, other than this undated, illegibly signed, document was offered by the Organization to support its claim.

It is well settled that, in a case such as this, the Organization and Claimant bear the burden of proof to show a violation of the Agreement. The language from Third Division Award 31642, between this Organization and this Carrier succinctly stated the rule:

"As the moving party in the dispute, the Signalmen's Organization has the responsibility of proving all aspects of the claim which it initiates. In this

situation, that includes proof that the disputed work was, in fact, performed by Signalmen on the date that the revised Scope rule became effective. Such proof is not found in this case record."

In this case, at a minimum, the Organization and Claimant were required to introduce reliable evidence showing what covered work was performed by the Signal Supervisor. They have failed to do so.

The only evidence introduced was the handwritten note referred to above. That note makes no reference whatsoever to April 16, 1997, and so the portion of the claim pertaining to that date must immediately fail.

In reviewing the contents of this note, it is clear that the writer of the statement did not personally observe any of the activities of the Signal Supervisor on April 13, 14, and 15, and, accordingly, is unable to indicate precisely what work the Supervisor did on any of these days and what work may have been done by BRS employees who may also have been present but were not heard or identified on the comline. This lack of personal knowledge of the writer as to the Supervisor's activities, as well as the imprecision of the writer in indicating just what he specifically heard on each of the days which led him to believe that the Supervisor was undertaking just which of the complained activities requires the Board to determine that the Organization has failed to offer sufficient proof to prevail in this case.

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 16th day of November 1999.