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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34079
Docket No. SG-34312
00-3-97-3-906

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of R. C. Usry for payment of an additional eight hours at the time and one-half rate for each Saturday and Sunday worked, beginning October 23, 1996, and continuing for the term of the violation, account Carrier violated the current Signalmen’s agreement, particularly Rule 15, when it assigned rest days of Thursday and Friday for the Signal Maintainer position on Gang 7CC5 at Cartersville, Georgia. Carrier’s File No. 15(97-6). General Chairman’s File No. 96-208-10. BRS File Case No. 10377-L&N.”

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 Organization maintains that Signal Maintainer R. C. Usry, assigned to Force 7CC5, had his work schedule unilaterally changed by the Carrier in violation of Rule 15 of the Agreement. Specifically, on October 23, 1996, the Carrier changed the Claimant's work schedule from a Saturday to Wednesday workweek to a Monday to Friday workweek. Instead of rest days of Thursday and Friday, the change gave the Claimant rest days of Saturday and Sunday. By letter dated November 4, 1996, the Organization maintained that the Carrier's October 25, 1996 cancellation of the bulletin reinstating the Claimant's Saturday to Wednesday workweek was without the Organization's concurrence as per Rule 15 and cited Third Division Award 31471 as support in being "an exact example." The Organization argued that the initial work schedule change to Saturday and Sunday rest days concurred with the Agreement. It argued that the Carrier's failure to meet with the Organization prior to the October 25, 1996 change and with no showing of operational problems, validated this continuing claim.

The Board reviewed the entire record and the Carrier's declinations. Third Division Award 31471 was issued by this Referee and pertains to Claimant L. T. Seals. It ruled for the Organization based upon the record in that case. Interestingly, it appears that the bulletin changing Claimant Seals' hours as ordered by the Board also included a change in Claimant Usry's workweek with rest days of Saturday and Sunday. Two days later, the Carrier issued a correction to that bulletin concerning Claimant Usry's workweek, stating that "this position is reinstated as it was originally intended."

The Carrier noted in its declination that the Organization waited over five years after the correction to Claimant Usry's workweek to present this claim. The Carrier pointed out that the October 23, 1996 bulletin was "in error and promptly corrected." It further noted, that during all of those five years, the Claimant and his predecessors worked the corrected schedule of Saturday to Wednesday with Thursday and Friday rest days. We find no evidence for an alleged dispute over this issue prior to the November 4, 1996 claim. Without respect to the fact that this claim represents clear acquiescence to a practice that went on for over five years without complaint, we find no merit to the claim after study of the facts. All of the allegations pertaining to a violation of Rule 15, the covering of overtime, or the lack of train traffic density raised on the property do not contain sufficient probative evidence for the Board to find an Agreement violation. The claim must be denied.

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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 25th day of May, 2000.