

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35585

Docket No. SG-35590

01-3-99-3-507

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of L. J. Milligan for payment of 24 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 1, Scope Rule, when on January 18 and 19, 1998, it allowed supervisory personnel to assist in making FRA tests. Carrier File No. K0698-5128. General Chairman's File No. 987201. BRS File Case No. 11029-KCS.”

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 claims the Carrier violated Rule 1, Scope, of the parties' Agreement on January 18 and 19, 1998, when it allegedly assigned Supervisor Jones, an

employee not covered by that Agreement, to assist in making biannual, FRA-required tests of signal and train control systems in territory included within the Signal Maintainer's position at Mena, Arkansas, Job 805. The Claimant was the incumbent of Job 805 at the time, and it is contended that assigning Supervisor Jones to assist with the testing work in question cost the Claimant a work opportunity totaling 24 hours, the amount of time it allegedly took Jones to do the work.

In support of the claim, the Organization presented completed inspection forms, signed by Supervisor Jones, which indicate the testing of certain equipment, at certain milepost locations, was done on January 18 and 19, 1998. The Organization alleges that the fact Jones signed the forms proves he did the testing. "The person performing the signal work signs the inspections forms," the Organization asserts.

The Carrier rejected the claim, asserting that Supervisor Jones was present when the testing work in question was done, but only in a training capacity. It states that a Signalman from Gang 890, who had never done the testing work before and was unqualified to do it alone, did the work under Jones' supervision. The Carrier states, "The only parts of the testing that was performed by Mr. Jones were merely incidental to the training process." The Carrier further stated that testing work like that in question does not require two people and that another Signalman from Gang 890 who was qualified had been assigned to do it at other locations all by himself. "Also, the mere act of signing that the testing has been done is not a violation of the Agreement," the Carrier asserts. The Carrier notes that the following portion of the parties' Scope Rule specifically states that it is to provide training for employees covered by the Agreement:

"Employees covered by this agreement will be assigned the work of installation, testing, and inspecting of all equipment, including technological change in Carrier's signal systems. Carrier will provide necessary training for the employees assigned to such work.

NOTE: Employees assigned to positions described in the Classification Rule of the Agreement will be trained and assigned, subject to qualification rules in the Agreement, to install, maintain and/or repair the systems and devices, including their appurtenances and appliances, set forth in the Scope Rule."

The record before us, as indicated by the foregoing discussion, contains little evidence, credible or otherwise, regarding the specific tasks performed by Supervisor Jones on the dates in question, and the information we do have regarding the matter is in serious conflict. With the record in this condition, the Organization, in our judgment, had the duty to come forward with competent evidence to overcome the Carrier's defense that Supervisor Jones engaged only in legitimate training duties. Clearly, this was not accomplished. We cannot speculate as to what the true facts may be, nor can we reconcile what meager conflicting facts there are. Accordingly, we find that the Organization failed to carry its burden of proof and that the claim, therefore, is without merit and must be denied.

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 24th day of July, 2001.