

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35632
Docket No. SG-35201
01-3-99-3-92

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of all Signal employees listed on Division and System seniority rosters for payment of \$5.00 for each calendar day from January, 1998, and continuing until all seniority rosters have been correctly revised, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35 and Agreement 15-18-94, Article II, Section B.(3). Carrier’s File No. 15(98-106). BRS File Case No. 10868-B&O.”

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.

On March 12, 1998, General Chairman C. T. Green submitted a claim to Director Employee Relations J. H. Wilson stating that the Carrier had violated Agreement Rule

35 and CSXT Labor Agreement No. 15-18-94, Article II B.(3) by allegedly not distributing and posting revised January 1998 Division and System Signalmen rosters at prescribed locations. The Claimants in this case are all employees listed on Division and System Seniority Rosters. The Organization seeks \$5.00 for each individual on grounds that the Carrier allegedly failed to issue a revised seniority roster per Rule 35 for the calendar year of 1998. The contract provision that the Organization claims the Carrier violated reads as follows:

**“RULE 35
SENIORITY ROSTERS**

A separate seniority roster will be compiled for each seniority district. Rosters shall show the name (including given name in full), seniority date and relative ranking in each seniority class of each person holding seniority on the seniority district, following the form shown in the sample roster attached to this Agreement as Appendix “C.” Rosters will be revised in January of each year and copies will be posted at all headquarters and, upon request, will be furnished any person appearing thereon who is not in active service on the seniority district. Four copies will be furnished the Local Chairman. The General Chairman will be furnished copies of all seniority rosters and all revisions. A seniority date not protested in writing to the Signal Supervisor with copy to the Local Chairman within sixty (60) days from its first posting on a roster, will be considered permanently established. Typographical errors on subsequent rosters may be corrected at any time.”

On May 11, 1998, the Carrier declined the claim advising that (1) there is no Agreement provision that imposes such a penalty (2) the rosters had been properly distributed and if by chance, not posted at all locations, such action, or lack of same, would not qualify each and every employee whose name appears on a roster for the compensation sought and (3) the Organization had not provided any evidence or Agreement language to support its allegation or request for the \$5.00 daily penalty payment for each B&O Signal employee.

Following a claims conference on November 5, 1998 the Organization confirmed that the Carrier had provided two exemplars of seniority rosters that had been posted in accordance with the Agreement specifications; however, the Organization averred it

“could not settle this claim until, ALL employees on ALL ROSTERS, both Division and System, receive a CORRECT up to date ROSTER(S), in accordance with the Agreement(s).”

At no time during the handling of the claim did the Organization buttress its allegations of Rule 35 violation(s) with probative evidence or show any contractual support for the \$5.00 per capita penalty claimed. Careful examination of the record dictates that the claim must be dismissed because the Organization failed to meet its burden of proof. In summary, the Organization did not furnish any evidence to prove that the Carrier did not distribute or post the Division and/or System Signalmen rosters in question or any Agreement language to support its request for the \$5.00 penalty.

AWARD

Claim dismissed.

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 28th day of August, 2001.