

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 36164  
Docket No. SG-36143  
02-3-00-3-331

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

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

**STATEMENT OF CLAIM:**

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

Claim on behalf of L. E. Nicely for payment of two hours and forty minutes at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 25, when it failed to call the Claimant to ascertain the cause of a track circuit light at Mile Post 326, at or near Roncerverte, West Virginia on February 13, 1999, and instead used a person not covered by the Agreement to perform the covered work. Carrier's File No. 15 (99-117). General Chairman's File No. 99-24-CD. BRS File Case No. 11180-C&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.

This claim requests payment of two hours and 40 minutes at the time and one-half rate based on an allegation the Carrier violated Rule 25 of the Agreement when it failed to call the Claimant for some signal work that had allegedly been performed by some unidentified person who was not covered by the Signalman's Agreement.

**Rule 25 - WORK OUTSIDE OF ASSIGNED HOURS reads in pertinent part as follows:**

**“Employees assigned to or filling vacancies on Independent Signal Maintainer positions will notify the person designated by the management where they may be called and will respond promptly when called. If they are needed for work outside of regularly assigned hours, the Independent Signal Maintainer on whose territory the work is required will be called first. If not available, the Leading Signal Maintainer and Signal Maintainer assigned to a Signal Maintenance Unit on the territory where the work is required will be called in order of their seniority as Signalmen. If these are not available, another qualified employee will be called. When an Independent Signal Maintainer knows that he will not be available for calls on his days off duty, he will notify the designated person and there will be no obligation to attempt to call him. This will not apply to monthly rated Signal Inspectors covered by Rule 54.”**

**From our examination of the record, there is no evidence to support the contention that anyone other than Signalmen performed any Signalman's work. As the moving party, it is incumbent upon the Organization to prove by probative evidence that a violation of the Agreement occurred. That burden has not been met in this case. Therefore, the claim 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 20th day of August 2002.**