

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36203
Docket No. SG-36284
02-3-00-3-508

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (formerly Louisville & Nashville Railroad):

Claim on behalf of M. J. Clayton, J. L. Tucker, R. L. Stonecipher, G. L. Catlett, B. W. Harris, J. J. Caudill, C. L. Womack, J. B. Gunn, Jr., K. L. Brooks, W. A. Seagraves, Jr., E. H. Reeves, D. L. Pitts, J. W. Norcross, C. D. Ballard, P. W. Stephens, G. Taylor, L. O. Carraway, M. T. Morel, T. B. Smith, S. T. Marlow, T. D. Pruett, and A. F. Dziedzic for payment of \$2,650.50 each. Account Carrier violated the current Signalmen's Agreement, particularly Rules 51, 31, and 32, when beginning on August 14, 1999 and continuing through September 27, 1999, Carrier allowed employees assigned to System Signal Gang Numbers 7X44, 7XC4, 7XD7, 7XD8, 7XD6 and 7XC2 to perform work not covered under Rule 51 on Seniority District No. 9 and deprived the Claimants of the opportunity to perform this work. Carrier also violated Rule 54 of the current Agreement when Carrier failed to respond to the initial claim in a timely fashion. Carrier's File No. 15-99-0240. General Chairman's File No. 99-208-18. BRS File Case No. 11445-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.

At the time this dispute arose, the Claimants were assigned to various positions on Seniority District No. 9. On September 29, 1999 the Organization presented a claim on behalf of the above listed Claimants alleging that System Gangs 7X44, 7XC4, 7XD7, 7XD8, 7Xd6 and 7XC2 were directed to perform work outside the purview of Rule 51. The Organization contended that the Carrier had "completely circumvented" the provisions of Rules 31 and 32 by assigning the work to the System Gangs.

The Organization further alleged that throughout the claim period the Maintenance of Way Department worked only four days each week, while the System Gangs continued to work throughout the weekend, during which they were allegedly assigned to do "other maintenance work." Relying upon "past practice, as well as the agreement rules," the General Chairman requested that the Carrier compensate the Claimants for the loss of work opportunity.

Thereafter, in December 13, 1999 correspondence, the General Chairman contended that the Carrier was "obligated" to allow the claim as presented because it did not notify the Organization that the September 29, 1999 claim was disallowed per Rule 54 of the Agreement.

We note at the outset that this claim is for the same work, same claimants and same dates as in Third Division Award 36202. It is quite clearly a duplicate claim. According to the Carrier, there is no basis for the amount claimed, particularly considering the fact that all Claimants were fully employed at all times prior to, during, and after the period of this claim. The Carrier argues that this cannot properly be considered a "loss of work opportunity" because it was work that had to be done in connection with the Tie Gang's schedule, which was not flexible, and could not be scheduled for a later date when the Claimants might be available.

The Carrier further argues that this is not a valid claim and should be dismissed without consideration of the alleged time limit violation, due to the failure of the General Chairman to identify the System Gang employees who allegedly performed the work or to prove that any of the Claimants were available to perform the work at issue, on any dates, particularly when those dates were not identified. Also, this issue has previously been decided and the amount claimed is clearly excessive. The General Chairman ignored the fact that this issue has been arbitrated many times over the past 30 years and the Organization's position had never been sustained according to the Carrier.

The matter was not resolved on the property and was placed before the Board for adjudication.

For the reasons set forth more fully in companion Third Division Award 36202, this claim is 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 September 2002.