

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36205
Docket No. SG-36296
02-3-00-3-522

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. A. Krauss, E. M. McGaha, A. P. Riggs, R. B. Frair, F. D. Hall, R. C. Meador, and F. W. Wolf, for payment of 55 hours and 58 minutes each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 3, 6 and 7 and CSXT Labor Agreement No. 15-122-93, when on May 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 1999, and on June 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 21, 22, 23 and 24, 1999, it allowed a Signal Inspector to take the place of and fill the vacancies of signal maintenance employees and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15 (99-175). General Chairman’s File No. 99-13-10. BRS File Case No. 11347-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.

This dispute involves a claim that a Signal Inspector was improperly used to perform Signal Maintainer work, thereby allegedly depriving seven employees of work opportunities.

On July 14, 1999 the General Chairman filed a "continuing claim," in which he maintained that the Carrier had violated Rules 3, 6, 7 and CSXT Agreement 15-122-93, due to the Carrier's use of Signal Inspector Simmons to take the place of other employees by directing him to perform work that is normally covered under the provisions of Rules 6 and 7. Specifically, the General Chairman asserted that Simmons was not used at any time to make any tests or inspections under Agreement 15-122-93, but was allegedly used to perform Signal Maintainer work and "take the place of employees that the Carrier failed to fill the vacancies of." As a remedy, the General Chairman maintained that the Claimants should be paid an additional 55.97 hours.

The Carrier denied the claim, contending that the Signal Inspector was used, along with all employees assigned to the territory, to make field and office connections for the new Pro-Yard system at Osborn Hump Yard. The Carrier further contended that the Agreement allows Signal Inspectors to be used for work other than inspecting and testing. Finally, the Carrier noted that Signal Inspector Simmons was in training class from May 17 through 21, did not work on June 6, and worked regular assigned hours on June 9, 14 and 18, 1999. All Claimants, except F. W. Wolf, took several days' vacation and two Claimants took time off for personal business; the amount of work and time frame allowed the Claimants the opportunity to work as many hours as they desired; and the Signal Inspector was used to fill in for several vacant jobs and for the hours the regularly assigned employees did not work.

When the issue was not resolved on the property, it was placed before the Board for adjudication.

Following careful review of the record evidence, we are convinced that none of the Rules that the Organization cited contain any prohibition against the Carrier's assignment of a Signal Inspector to assist Signal Maintainers. Specifically, in these circumstances, the use of a Signal Inspector to assist other signal employees with the installation of the new Pro-Yard system in Osborn Yard on various dates in May and June 1999 was permissible under the L&N Agreement, including CSXT Agreement 15-122-93.

In that connection, this issue is not new to the Board. Third Division Award 33977 involving the parties to this dispute is on all fours with regard to this claim. In that Award, the Board stated:

"It is a well-established proposition that when there is an asserted jurisdictional question between employees of the same craft in different classes, and represented by the same Organization, the burden of

establishing exclusivity is even more heavily on the Organization. See, e.g. Third Division Awards 22761 and 21495. Moreover, the Organization may meet this extraordinary burden if it can show a rigidly constructed Classification of Work Rule or an overwhelming demonstration of a system-wide practice.

* * *

Thus, because there is no persuasive Rule support or record evidence that there is an exclusive right to the work, 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 24th day of September 2002.