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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36749
Docket No. SG-36609
03-3-01-3-127

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (former Seaboard Coast Line):

Claim on behalf of R.S. Graham for payment of 10 hours and 30 minutes at the time and one-half rate. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 3 and CSXT Shop Agreement S-069-87, when it failed to allow the Claimant to perform the work of supervising employees assigned to perform wiring work in Carrier’s DePriest Signal Shop on January 5, 6, and 7, 2000. Carrier’s File No. 15 (00-0085). General Chairman’s File No. SCL 05-01. BRS File Case No. 11565-SCL.”

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 filed the instant claim on behalf of Claimant R. S. Graham after the Carrier failed to allow the Claimant to direct and supervise employees assigned to him in the DePriest Signal Shop on January 5, 6 and 7, 2000. The Carrier denied the claim, contending that the Rules did not require it to fill unneeded or unwanted positions, and that there was no Foreman's position to be filled on the dates in question.

The Organization contends that the Carrier violated the Agreement, particularly Rule 3 – Signal Foremen and CSXT Labor Agreement No. S-069-87, when it did not allow the Claimant to work as a Foreman on the dates at issue. The Organization points out that Rule 3 clearly and unambiguously provides that Foremen are to be assigned the duties of directing and supervising other employees.

The Organization maintains that the Carrier required Signal Shop employees to perform wiring outside of their regularly assigned hours on the dates at issue. This dispute centers on whether the Carrier is required to allow the Foreman to perform overtime service when employees assigned to work under his authority are assigned to do so. Stated differently, the Organization asserts that Rule 3 requires the Carrier to allow the Foreman to perform service when the employees working under his direction are performing service. The employees' need for direction and supervision does not stop simply because it is later in the day, when overtime provisions begin to apply.

The Organization acknowledges that the Carrier has the right to assign its forces to work overtime on various projects. The Carrier does not, however, have the right to evade the clear language of the Agreement by eliminating the supervising and directing provisions contained therein. As for the Carrier's assertion that there was a Lead Signaller present who could direct the work on the dates at issue, the Organization points out that under Rule 4 – Leading Signallers, a Lead Signaller may relieve the Foreman when the Foreman is absent. The Organization argues that in the instant situation, the Foreman was not absent. Instead, the Carrier failed to allow the Foreman to direct and supervise the work. The Organization further notes that the Carrier did not pay the Lead Signaller at

the Foreman's rate of pay, which clearly indicates that the Lead Signalman was not used to relieve the Foreman.

The Organization maintains that there can be no doubt that Rule 3 specifically obligates the Carrier to allow the Foreman to perform the work at issue. Because the Carrier's actions deprived the Claimant of the opportunity to perform this work, he lost wages as a result, and is entitled to recover for such a loss. The Organization asserts that the claim seeks an amount equal to the number of hours spent by employees performing the work. The Organization ultimately contends that the claim should be sustained in its entirety.

The Carrier contends that unless restricted by Agreement or by law, carriers have the managerial right to decide which positions need to be filled at overtime. On the dates in question, local management made the decision that they needed two working Signalmen for overtime, and that they did not need a non-working Foreman to direct and supervise their work on overtime. The Carrier asserts that there is no requirement in the Agreement that calls for a Foreman to direct a Lead Signalman and a Signalman when they work overtime. The Carrier emphasizes that the only language that the Organization cited does not address the issue in this dispute. The Carrier maintains that Rule 3 merely defines the functional role of a Signal Foreman in relation to the employees that he supervises during his normal tour of duty. There is no specific language that requires the Carrier to have a Signal Foreman work overtime when that position is not essential to the work being performed.

The Carrier then points out that Rule 16 - Overtime and Calls provides for calling "part of a gang" to work overtime. The Carrier maintains that Rule 16 preserves the Carrier's managerial prerogative to determine how many members of a gang are required to work overtime. The Carrier contends that this is a case of managerial discretion, and management decided that only two working Signalmen were needed for the overtime work, and that a non-working Foreman was not needed. The Carrier argues that the Organization furnished no evidence to prove that the Carrier committed a violation of the Agreement. The Carrier points out that the Board previously denied a similar claim.

The Carrier ultimately contends that the claim is without merit, and it should be denied in its entirety.

The Board reviewed the record in this case, and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it did not allow the Claimant to perform the work of supervising employees assigned to perform wiring work in the DePriest Signal Shop on January 5, 6, and 7, 2000. It is clear that the Carrier has the managerial right to decide which positions are required to be filled on overtime. In this situation, the Carrier decided that it did not need a non-working Foreman to direct and supervise the two working Signalmen on overtime. The Organization failed to cite any specific language that requires the Carrier to have a Signal Foreman work overtime prior to his regular shift position once the Carrier determines that the position is not essential to the work being performed. The Carrier is correct that the Organization cited no contract language that supports its case. The Rules cited by the Organization simply define a Signal Foreman. The Rule does not state that the Carrier is required to have one work in certain instances.

In Third Division Award 36165, the Board states:

“The subject of the Carrier’s right ‘to determine when, where and by whom work will be performed’ is clearly established. See Third Division Awards 23551 and 34222.”

The Board went on to hold in that Award that “the language of Rule 3 - Signal Foreman of the parties’ Agreement does not demand or provide for the use of a Foreman in a situation such as that involved in this case. The Organization failed to establish its position that a Foreman was required here. Therefore, the claims are denied.”

Given the facts of this case, there is no reason for the Board to depart from the language in the earlier Award cited above. Therefore, the claim must be denied.

AWARD

Claim denied.

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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 22nd day of October 2003.