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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36803
Docket No. SG-36739
03-3-01-3-301

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 B. J. Whisnant for payment of 40 hours at the straight time rate. Account Carrier violated the current Signalmen’s Agreement, particularly Appendix 1, the Vacation Agreement, Section 6 when it placed a burden on the incumbent to Signal Maintainer’s position at Manchester, Georgia, when he returned from vacation. Carrier File No. 15 (00-0149). General Chairman’s File No. SCL-06-01A. BRS File Case No. 11566-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 Claimant in the instant case is a Signaller who was available to work vacation relief for a Signal Maintainer while that employee was on vacation between April 10 and April 17, 2000. The thrust of the claim is that the failure to use the Claimant on vacation relief was a violation of the parties' Agreement because the failure to do so placed a burden on the vacationing employee once he returned to work.

The Organization contends that the returning Maintainer was burdened because he was frequently used before he left on vacation to perform troubleshooting and because the returning Signal Maintainer was expected to complete four weeks of FRA tests for the month of April in the remaining three week period of that month. The record reflects that in the week before the vacationing Signal Maintainer left he did not perform a single FRA test and following his return, he worked only a few hours of overtime; on only three days, none of which were in the last week of April, did he perform any tests. Finally, on one of those three days the Claimant worked unloading his truck.

The proper test to determine whether there has been a "burden" within the meaning of Appendix 1, Section 6 of the Vacation Agreement is that set forth by Referee Wayne Morse, i.e., whether the employee in question was "overtaxed" or "oppressed." More specifically, Referee Morse held, whether under the particular circumstances of any given case the employee was "reasonably able to do the work."

In our view, the claim must fail when the facts are viewed in that context. It is true, as the Organization asserts, that because no vacation relief worker was assigned during the vacation period there was only a three week period to complete tests that would have ordinarily been completed in four weeks. However, that fact alone does not compel a conclusion that the vacationing Signal Maintainer was overtaxed or oppressed upon his return. Rather, when we examine the amount of hours, including overtime, that he worked upon his return, the tasks to which he devoted himself during that period, and the contrast between the amount of

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overtime that he worked before April, a much greater amount than that worked in April, we find that the "burden" necessary to compel the utilization of a vacation relief worker did not exist.

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 29th day of December 2003.

