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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36931
Docket No. SG-36225
04-3-00-3-436

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Paducah & Louisville Railway, Inc.)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Paducah & Louisville Railway (P&L):

Claim on behalf of M. A. Whitis and K. G. McGregor for payment of 71.625 hours each at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendix 1 and the Letter of Understanding dated April 23, 1999. Beginning on June 21 through June 29, 1999, Carrier permitted outside contractor employees to construct and install signal equipment at the CTC Control Point at South Dawson and deprived the Claimants of the opportunity to perform this work. BRS File Case No. 11406-P&L.”

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 basic facts in this case are not in dispute. Under date of July 21, 1999, the Organization filed the instant claim.

In its initial denial and throughout handling on the property, the Carrier merely reiterated the facts set forth in the claim letter but provided no reason at all for denying this claim; but merely asserting, "there is no basis for this claim." [Timeliness defenses interposed by the Carrier in the mid-level appeal denial were met with an assertion by the General Chairman that the Carrier had granted a time extension. Thereafter, the procedural objection apparently was abandoned in the handling before the Board].

In its written Submission to the Board, the Carrier made the following allegation, for the first time in the handling of the case: "During the period from June 21, 1999 through June 27, 1999 the Carrier's Signal Department Employees installed signal equipment at the CTC Control Point at South Dawson. It was necessary that employees of Interrail Signal Engineering, Inc. be on hand to troubleshoot the new system and provide technical assistance in the installation. This was the first VHLC (Vital Harmon Logic Controller) ever installed on the Paducah & Louisville Railway, Inc." In addition, the Carrier asserted for the first time in its Submission to the Board that the CTC Control Equipment Bungalow had been pre-wired by the vendor at the factory.

Even if, arguendo, these assertions were relevant and might have constituted a valid defense to the Organization's prima facie showing that the Carrier violated the cited Agreement provisions, we may not consider evidence and arguments advanced de novo at the Board level. For reasons set forth more fully in Third Division Awards 36929 and 36930, this claim is sustained.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 22nd day of March 2004.