

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36971
Docket No. SG-36226
04-3-00-3-437**

The Third Division consisted of the regular members and in addition Referee Dana Edward 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 J. A. Hunter for payment of sixty (60) hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendix 1 (Scope Rule) and the Letter of Understanding dated 04-23-99, when on June 17, 18, 19, 28 and 29, it permitted a non-covered employee to perform work covered under the Scope of the Signalmen's Agreement and deprived the Claimant of the opportunity to perform this work. Carrier also violated Rule 31 (Time Limits on Claims) when Carrier failed to respond to the claim in a timely fashion. BRS File Case No. 11437-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.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute and chose to file a Submission with the Board.

By letter dated July 21, 1999, the Organization submitted a claim to the Chief Engineer contending that the Carrier had violated Appendix 1 of the parties' Agreement and seeking a total of 60 hours at the overtime rate of pay on behalf of the Claimant (\$1,635.60). The claim alleged that IBEW-represented Communications Department employee M. Stevenson checked out and cut over certain CTC equipment in the CTC Office as part of a process of putting Ponds and Dawson CTC Control Points in service. According to the Organization, the violation occurred on June 17, 18 and 19, 1999, when the IBEW-represented employee allegedly worked 36 hours checking out and cutting over CTC equipment for North Pond, which is located at Milepost JK 140.9, and on June 28 and 29, 1999, when the IBEW-represented employee allegedly worked 24 hours checking out and cutting over CTC equipment for the CTC Control Point at South Dawson, which is located at Milepost JK 165.

At the outset, we are not persuaded by the Organization's bare assertion that the initial claim was never denied by the Chief Engineer and thus was payable irrespective of its merits due to a fatal violation of Rule 31 - Time Limit On Claims. It is noted that this claim was submitted to Chief Engineer Buchanan together with a number of companion claims all of which were timely denied and the Carrier produced copies of the August 16, 1999 denial letter in this case. We have no reason to contest the General Chairman's assertion that the letter may have gone astray but, given the fact that each and every other initial declination letter cited in the series of BRS vs. PAL companion cases subsequently appealed to the Board was dated August 16, 1999, it is reasonable to conclude that the instant declination letter, just like the others, was mailed to the Organization.

As to the merits, we must conclude that the Organization did not satisfy its burden of proof that the Carrier's use of an IBEW-represented employee to perform computerized code input to radio links on the claim dates violated Appendix 1 of the P&L/BRS Agreement. In that connection, as noted above, the IBEW was provided Third Party Notice of the claim and submitted the following statement, which remains essentially unrefuted on the record:

“. . . the basic issue in the dispute is the testing and cutover of a track and signal engineering project on Carrier property. This work required Communication employee Morgan Stephenson, who is represented by this Organization, to assist during the testing and cutover phase of this project within the Radio Equipment Room located adjacent to the Dispatcher's office. . . . This Organization takes serious exception to the Brotherhood of Railroad Signalmen claiming as their work; the alignment and testing of the signals, and handling of the computerized code input to the radio link. The fact of the matter is that Communication Employees represented by this Organization have been responsible for this work (operation and maintenance of the subject equipment) since the railroad began its operation in August of 1986.”

The claim must be denied for failure of proof.

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 21st day of April 2004.