Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37117
Docket No. SG-37518
04-3-02-3-611

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of T. L. Fessel, J. C. Emmert, M. B. Reed, W. J. Baudendistel, L. T. Lahndorf and M. A. Benner, for 20 hours at the straight time rate and four hours at the time and one-half rate to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly Rule 40 and the B&O System Agreement, Article II, paragraphs A & B, when it used an employee at a cut-in project in Troy, Ohio on June 11 and 12, 2001, when the employee held no seniority on any B&O roster or district. Carrier's File No. 15 (00-0189). General Chairman's File No. SSCGW-1-11-01. BRS File Case No. 12197-B&O."

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 facts of the instant matter do not appear to be in dispute. At the time that this incident arose, the Claimants were assigned to various Signal Department positions on System Signal Construction Gang 7X16 on the Toledo Subdivision of the Louisville Division. The incident occurred on June 11 and 12, 2001 when the Carrier used CSXT Safety Representative B. Carter, a former Conrail Signal employee to provide food, beverages, and other supplies to employees working at cut-over locations on a seniority district covered by the B&O Agreement.

By an undated letter, the Organization submitted its claim alleging that the Carrier violated Rule 40 of the B&O Agreement because:

> "Mr. Carter has recently and for some time been working as a safety representative at B&O System construction cut-ins. Most recently, he worked at a two day cut-in Monday, June 11, 2001 and Tuesday, June 12, 2001 in the Troy and Tipp City, Ohio area, Toledo Sub of the Louisville Division. Mr. Carter works delivering drinks and food and other items to cut-in locations. Even though these efforts are appreciated, he actually is crossing over railroad and seniority districts."

Pursuant to this claim, the General Chairman requested a total of 20 hours straight-time pay and two hours overtime pay to be divided equally between the Claimants.

The issue in the instant case is whether the Carrier assigned CSXT Safety Representative B. Carter to perform signal work to the exclusion of the six Claimants on Monday, June 11 and Tuesday, June 12, 2001 when he served drinks, food and other supplies to employees working on a signal cut-over project on the former B&O property and whether the Claimants are entitled to an additional $600.00 for the alleged Agreement violation.

The Organization takes the position that the Carrier violated Rule 40 and CSXT Labor Agreement No. 15-18-94 on June 11 and 12, 2001. It contends that Safety Representative Carter holds no seniority on any B&O signal rosters and thus by allowing him to work on the B&O seniority district, the Carrier violated the B&O Agreement.

Conversely, the Carrier takes the position that it acted properly. There is no evidence to suggest that Safety Representative Carter performed any signal work on June 11 and 12, 2001, which was either reserved by Agreement or past practice to BRS-represented employees. The Carrier contends that the Organization failed to provide any evidence of its allegations and the claim should be denied. According to the Carrier, the claim ". . . is nothing more than an unsubstantiated assertion made as a hostile response towards CSXT's safety program."

After a review of all evidence, the Board finds that it must agree with the Carrier. The burden of proof in this matter falls on the Organization to prove that the Carrier erred when it assigned Safety Representative Carter to provide food and drinks to employees who were working on a cut-over project. We find that the Organization has been unable to meet that burden. A review of the record discloses that there is no evidence to suggest that Safety Representative Carter performed any signal work on the claim dates. The Organization failed to establish by contract language that serving food and drinks was specifically mentioned as reserved to the Organization or retained within the scope of its Agreement or by past practice. Thus, this "work" was not shown to be reserved to the six Claimants or any other employee represented by the Organization.

In sum, we find that the Organization has been unable to meet its burden of proof in this matter. Thus, we find that 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 25th day of August 2004.