Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37136
Docket No. SG-37776
04-3-03-3-111

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood that:

Claim on behalf of J. R. Clark, W. L. Griffith, J. A. Monaco, M. R. Lewman, L. A. Bruckman, J. D. Yates, G. E. Waggoner, D. B. Sandlin, K. Ferry, R. L. Caldwell, R. S. O'Rourke, F. W. Theard, J. R. Rohl, R. A. Orich, M. E. Lorenz, D. B. Switzer, J. C. Kane, D. J. LaMorte, L. R. Orich, B. K. Rodgers, R. E. Kulpa, M. Spinks, B. E. McCallister, J. J. Emsing, M. A. Heiligstedt, M. D. Thaxton, J. C. Hansen, R. J. Mezo, J. R. Gallo, W. L. Archer and J. P. Taylor, for one hour per week each at their respective straight time rate of pay starting November 1, 2001, and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rule 3-D-1, when it allowed employees not covered by the Agreement to perform work at Calumet Park Interlocking and deprived the Claimants of the opportunity to perform this work. Carrier File No. S-02-001. General Chairman's File No. 01-92-IHB. BRS File Case No. 12386-IHB."

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.

On December 19, 2001, the Organization filed a claim on behalf of the Claimants, arguing that the Carrier violated Rule 3-D-1 when it allowed, and continues to allow, employees not covered by the Agreement to perform the signal work at Calumet Park Interlocking. The Carrier denied the claim.

The Organization contends that this dispute developed in July 2000, when the Conrail Operator was removed from Hohman Avenue, thereby leaving Conrail with no involvement at Calumet Park Interlocking. The Organization points out that Calumet Park Interlocking then was placed under the control of the Carrier's Dispatcher, and this arrangement remains in effect today. The Organization further asserts that Calumet Park Interlocking is owned by the Carrier, and this makes it part of the seniority district, as provided under Rule 3-D-1. The Organization emphasizes that in his August 2000 letter to the General Chairman who represents the former Conrail members who continue to perform work at the Calumet Park Interlocking in violation of the working Agreement, the Carrier's Manager of Labor Relations & Personnel, J. A. Markase, agrees with the Organization's position that the employees of Local No. 3 should be performing all of the work at the Calumet Park Interlocking. The Organization further points out that schematic drawings of the area, as well as other documents, show that maintenance is performed by "I.H.B.R.R."

The Organization goes on to assert that the Carrier's defense, presented by Markase, now cites the opposite of what was stated in Markase's August 2000 letter. The Carrier's new position is that Labor Relations was in error in August 2000 and that the signal portion of the Calumet Park Interlocking now is owned by the SC&S, and not by the Carrier. The Organization contends that there is no evidence to support the Carrier's assertion that someone other than IHB owns the area in

question or the Carrier's further defense that there is a Joint Facility Agreement that allows Local No. 22 members to perform the work in dispute. The Organization maintains that the Carrier is the owner of the interlocking in question and the Carrier failed to produce any evidence to support its affirmative defense that the Calumet Park Interlocking was owned by anyone other than IHB. Moreover, the Organization argues that it is hard to believe that Markase who is responsible for administering contracts, would be in error in his August 2000 letter.

The Organization maintains that the Carrier allowed and continues to allow employees who are not covered by the Agreement to perform the work at Calumet Park Interlocking that should rightfully be assigned to the Claimants. The Carrier's reason for not assigning the work to the Claimants is unsupported by any evidence. The Organization points out that the record shows that the Claimants were and presently are available to perform the work that improperly has been assigned to others not covered by the Agreement. The Organization asserts that it is well established that when employees are deprived of the opportunity to perform work on their seniority district, the employees lose wages they would have earned for doing the work and they are entitled to recover for such loss. The Carrier violated the Agreement when it allowed improper employees to perform the work on the Claimants' assigned district, and the instant claim should be sustained in its entirety.

The Carrier contends that Calumet Park Interlocking is a joint interlocking between the CSXT, NS, and the Carrier. The Carrier points out that control of Calumet Park Interlocking was transferred from the former Conrail Operator to the IHB East Dispatcher in February 1999 and control of Hohman Tower was transferred to the IHB East Dispatcher in March 2000. The Carrier emphasizes that it has no ties to the CSXT/NS acquisition of Conrail. The Carrier further maintains that although the former Conrail SC&S line that crossed Calumet Park Interlocking at grade has been removed and retired on the south side of the interlocking, it still connects to the interlocking on the north side.

As for the Organization's assertion that its position is supported by Markase's August 2000 letter, the Carrier argues that this letter is in error. The Carrier asserts that this letter was predicated on the belief that the joint facility arrangement no longer was in effect, but the Carrier points out that this was not the

case. Shortly after the August 2000 letter was written, it was revealed that the joint facility arrangement still was in full force and effect. The Carrier points out that the Joint Facility Agreement for Calumet Park Interlocking dates back to the early 1900s. The Carrier maintains that because the joint facility arrangement that prompted the labor Agreement still is in full force and effect, the labor Agreement that allows Local No. 22 members to perform this work at Calumet Park also remains in full force and effect. The Carrier emphasizes that arbitrators have ruled that if a labor Agreement is prepared in conjunction with a joint facility arrangement, that labor Agreement remains in effect as long as the joint facility arrangement remains in effect. The Carrier therefore argues that the employees represented by the CSXT Northern (formerly Conrail) General Chairman maintain the interlocking beginning at the eastbound home signals on behalf of the SC&S (formerly Conrail, now NS) by virtue of a separate operating Agreement between the Carrier and SC&S, and not on behalf of the Carrier as owner of the property. The Carrier asserts that the signal portion of the Calumet Park Interlocking is owned by the SC&S, not by the Carrier. The Carrier maintains that the IHB main tracks through the interlocking are owned by the IHB, but the interlocking signal system is owned by the SC&S and maintained by Local No. 22 in accordance with the existing Joint Facility Agreement.

The Carrier contends that because the signal portion of Calumet Park Interlocking is not owned by and never has been maintained by the Carrier, there is no violation of Rule 3-D-1. The Carrier maintains that the Organization's claim is without merit, and the instant claim therefore should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board reviewed the record in this case, and we find that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it allowed employees not covered by the Agreement to perform the work at Calumet Park Interlocking. The record reveals that Calumet Park Interlocking is a joint interlocking between CSXT, NS, and the IHB. Control of the Calumet Park Interlocking was transferred from the former Conrail Operator to the IHB East Dispatcher in 1999 after the completion of an upgrade project. The control of the Hohman Tower was transferred to the IHB East Dispatcher at the completion of an

upgrade and remote project in 2000. Both upgrade projects were sections of a joint project between Conrail and IHB that began in 1997. They were not part of an acquisition of Conrail and IHB has no ties to and is not a party to the CSXT/NS acquisition of Conrail.

The original Joint Facility Agreement for the Calumet Park Interlocking dates back to the early 1900s. The Joint Facility arrangement is still in full force and effect. The labor Agreement is still in full force and effect as well. The interlocking system is owned by SC&S and is maintained by Local 22 in accordance with the Joint Facility Agreement.

The Board finds that because the signal portion of Calumet Park Interlocking is not owned nor was it ever maintained by the IHB, there is no violation of Rule 3-D-1 of the IHB/BRS Agreement.

Because the Organization failed to meet its burden of proof in this case, 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.