

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37155
Docket No. SG-37810
04-3-03-3-175

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 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):

Grievance on behalf of J. J. Ward, for the reinstatement of the Signal Inspector's position on the Newark Seniority District, account Carrier violated the current Signalmen's Agreement, particularly Rule 28(b), when it failed to make an Agreement with the General Chairman for the apportionment of positions after Carrier abolished the Claimant's position on December 29, 2001. (Carrier's File No. None. General Chairman's File No. New-01-05-02. BRS File Case No. 12528-B&0.”

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's position as Signal Inspector on the Newark Seniority District was abolished on December 29, 2001 at which time he exercised his seniority to another Signal Inspector position. The Organization contends, on his behalf, that the Carrier violated Rule 28 that provides that 17 Signal Inspector positions are to be maintained "... from time to time based on requirements of the service, in the judgment of the Management . . ." and that if that number "... is increased or decreased . . . the apportionment of positions to each seniority district will be by mutual agreement."

Under the terms of Rule 28 the condition precedent necessary for the apportionment of positions by mutual agreement is whether the number of Signal Inspectors increases or decreases over 17 such positions. Our review of the record however shows no evidence with regard to the number of Signal Inspector positions on the Newark Seniority District other than the fact that the Claimant's position was abolished. Thus, we do not know whether the number of such positions is less than, equal to, or greater than 17 and we cannot therefore determine whether the condition precedent has been fulfilled. Accordingly, as the proponent of the alleged contract violation the Organization failed to carry its burden 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 25th day of August 2004.