

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37240
Docket No. SG-37701
04-3-03-3-35

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Seaboard Coast Line
(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 R. H. Phillips, for 24 hours straight time and four hours time and one-half, account Carrier violated the current Signalmen's Agreement, particularly Rule 3, when it used a Signal Foreman to take the place of the Claimant by performing the work of pulling out cable, placing cable in ditch lines, installing cable ditch line marker tape and the setting of a signal house, at N.E. Miami Plantation, on October 1, 2, 3 and October 5, 2001, and deprived Claimant of the opportunity to perform this work. Carrier's File No. 02-0042. General Chairman's File No. SCL-03-06-02A. BRS File Case No. 12424-SCL.”

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.

During the week of October 1, 2001, the Claimant was assigned to System Signal Force 7X10. Also assigned to this force were Lead Signalman J. G. Howell and three additional signal employees, L. E. Norris, P. E. Faith and M. P. Derisi. Of note, and pertinent to this dispute, Foreman J. Deal was absent from his assignment with Signal Force 7X10, and Lead Signalman Howell stepped up to be the Acting Foreman. Upon assuming those duties, Lead Signalman Howell was compensated at the higher rate of pay.

In a letter dated November 21, 2002, the Organization submitted a claim on behalf of the Claimant in which it maintained that the Carrier violated Rule 3 – SIGNAL FOREMAN of the Agreement, account the Carrier had an “insufficient number” of employees to perform the necessary tasks during the aforementioned week. Specifically, the Local Chairman alleged that the acting non-working Foreman (Howell) performed the signal work of pulling out cable, placing cable and installing cable ditch line marker tape in ditch lines, as well as installing a signal house. According to the Local Chairman, these “actions of this non-working foreman took the place of another employee in violation of the Agreement,” and as such, he contended that the Claimant should be compensated as requested.

The claim was denied by letter dated January 18, 2002, wherein the Manager of Signal Operations stated:

“The carrier never instructed Mr. Howell, the acting foreman, to perform any signal duties pertaining to the signal cable installation at unknown location. Further investigation reveals that Mr. Howell elected on his own to participate with the installation of the signal cable.”

The Carrier further stated that the claim was “excessive and vague.”

In its March 4, 2002 appeal, the Organization asserted that the Carrier had an insufficient number of Signalmen necessary to perform the work at issue, necessitating

the non-working Foreman to supplement the forces. Specifically, the Organization maintained:

"Mr. Howell was clearly performing signal work, and taking the place of another employee. Whether Mr. Howell was 'instructed', 'elected', or 'supported' in this work is of no consequence. He did perform the work, and it is a clear violation of Agreement Rule 3."

In its final denial of the appeal, the Carrier reiterated its earlier stance, maintaining that Rule 3 specifies that a Foreman may perform work over which he has supervision on a "random basis." The issue was not resolved on the property, and is now before the Board for adjudication.

Rule 3 provides that a Foreman may perform the necessary work to instruct those under his supervision, but is not "required" to regularly perform any work over which he has supervision. Under the circumstances, there is no record evidence which suggests that the disputed work was performed by Acting Foreman Howell with the authority, instruction, or knowledge of any CSXT official, or at the Carrier's direction. In the absence of such evidence, the Organization failed to meet the burden of proof necessary to establish that the Carrier violated any portion of the Agreement, specifically Rule 3. Therefore, 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 27th day of October 2004.