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NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37303  
Docket No. SG-37553  
04-3-02-3-658

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 & 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 D. M. Jerry, D. J. Spoores, F. H. Wells, III, R. E. Hazek, C. D. Hubbard and R. W. Brown for 30 hours at the straight time rate and six 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 Dreshler, Ohio, on September 20, 21 and 22, 2001, when the employee held no seniority on any B&O roster or district. Carrier’s File No. 15 (01-0210). General Chairman’s File No. SSCGW-1-12-01. BRS File Case No. 12198-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 do not appear to be in dispute. At the time this incident occurred, the Claimants were assigned to various positions on System Signal Construction Gang 7X14 on the Toledo Sub Division of the Louisville Division. The incident occurred on August 20, 21 and 22, 2001 when the Carrier assigned Safety Representative B. Carter, a former Conrail Signal Department employee, to "work" on a seniority district covered by the former B&O Agreement. The "work" consisted of providing food, beverages, and other supplies to employees working at cut-in locations.

By letter dated September 3, 2001, 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 three day cut-in Monday, August 20, 2001, Tuesday, August 21, 2001, and Wednesday, August 22, 2001 in the Deshler, 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 its claim, the Organization requested a total of 30 hours straight-time pay and six hours overtime pay to be divided equally among the six Claimants.

The issue is whether the Carrier assigned CSXT Safety Representative Carter to perform "signal work" to the exclusion of the six Claimants on August 20, 21 and 22, 2001, when he served drinks, food and other supplies to employees working on a signal cut-in project on the former B&O property, and whether the Claimants are entitled to additional compensation for the alleged Agreement violation.

The Organization takes the position that the Carrier violated Rule 40 as well as CSXT Labor Agreement No. 15-18-94. The Organization 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 August 20, 21 and 22, 2001, that 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 record evidence, the Board finds that it must agree with the Carrier. The burden 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-in project. We find that the Organization has been unable to meet that burden. The record discloses that there is insufficient evidence to suggest that Safety Representative Carter performed "signal work" on the claim dates. The Organization failed to establish by contract language that the "work" at issue (serving drinks and food) was specifically mentioned as reserved to the Organization or retained within the scope of the Agreement or by past practice. Thus, this "work" was not shown to be reserved to the six Claimants or to any other employee represented by the Organization. This issue was previously addressed by the Board in Third Division Award 37117.

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.

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**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 December 2004.