

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37445
Docket No. SG-37170
05-3-02-3-139

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (KCS):

Claim on behalf of J. S. Harmon, G. McCoy, H. G. Altstatt, Jr., N. Nicholas, D. J. Riggs, M. J. Kalczynski, R. H. Ware, Jr., T. C. Johnson, J. A. Bates, R. M. Shoenbroek, J. C. Timmons, T.D. Bengt, Jr., J. E. Sellers, D. J. Hamilton, L. B. Degner, B. J. Newton, T. E. White, IV, K. W. Pool, M. A. Mitchell, T. A. Hogan, C. Charles, B. Stewart, T. P. Breaux, J. L. Cathey, R. T. Parker, Jr., J. D. Nettles, M. S. May, C. S. Cooper, J. M. McDonald, L. D. Beisley, D. E. Shelton, G. D. Taylor, A. L. Orendorff, F. D. West, G. B. Neal, J. E. Abbott, P. K. Stutz, C. L. Evans, D. L. Parker, J. D. Harwell, P. W. Darity, J. R. McCrary, Jr., R. D. Craig, G. M. Bordelon, T. J. Asher, D. R. McBride, C. E. Frank, and C. D. Francis for 650 hours at the pro-rata rate of pay to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly the Memorandum of Agreement dated February 22, 2000, when between November 21, 2000 and February 12, 2001 it failed to keep its signal forces at or above the minimum number required by the agreement and then hired contract employees to install highway grade crossing warning devices in violation of the agreement. Carrier File No. K06015440. General Chairman's File No. 01-015-KCS-185. BRS File Case No. 11897-KRS.”

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 Claimants were at all material times herein employed by the Carrier on various signal crews. Between November 21, 2000 and February 21, 2001, it used an outside contractor despite the fact that its workforce of Signalmen fell below 62. More particularly, the record shows that during this period its complement of Signalmen was 59 between December 5 and December 10, 2000; 60 between December 11, 2000 and January 14, 2001 and 61 between January 15 and February 12, 2001.

The Organization's challenge to the Carrier's action rests on the parties' Memorandum of Agreement that provides that the Carrier "... agrees to maintain a workforce of 62 signalmen ... if, for any reason, the workforce falls below 62, all rights to use contractor forces ... are suspended until the workforce again reaches 62. ...". The Carrier in reply argues that the claim is whether, "despite its best efforts to maintain minimum force and its demonstrated willingness to discontinue the contractor's project as soon as the union requested discontinuance," it violated the parties' Memorandum of Agreement.

The Carrier's defense lacks merit. Assuming, arguendo, that it did make good faith efforts to keep the Signalman complement above the requisite number and that it did in fact terminate the contract at issue once the Organization demanded that it did so, the fact of the matter is that the parties' Memorandum of Agreement requires the Carrier to maintain a workforce of at least 62 and that if "for any reason" that number was not maintained the Carrier lost its right to contract out. Thus, its efforts and responses to the Organization's protest are irrelevant. Accordingly, because the Carrier did not maintain the requisite level of Signalmen and contracted out nonetheless, we are compelled to find that it violated the parties' Memorandum of Agreement.

That, however, does not end the matter. We must also consider the question of remedy. In the initial claim and again before the Board, the Organization identifies a

Claimant-devised formula for determining the total amount of hours that should be used for the remedy. The Organization also identified the Claimants that it believes should be compensated and their respective amount of remedy. However, we are not as confident about the Organization's effort. We believe that the record developed on the property supports the calculation of the remedy. For example, the Organization failed to support the claim that approximately 43 Claimants should be compensated when, at most, the Carrier failed to meet the required number of Signalmen by only a much, much smaller number. Further, the Organization uses in its formula the rate of ten hours per day, but the record is unclear whether the relevant period is a four or five day workweek. Similarly, at least one of the periods in question involves holidays. The record does not reflect whether the Organization properly excluded those days from its formula. Finally, the record reflects that despite the fact that the number of Signalmen fell below the number required by the parties' Memorandum of Agreement, all Claimants remained fully employed during the relevant period.

Under these circumstances we are compelled to conclude that the remedy requested is insufficiently supported by the record. Any attempt to determine another remedy based on this record would be speculative and unwarranted. Therefore, we find only that the Carrier committed a technical violation of the parties' Memorandum of Agreement.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of March, 2005.