

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37540
Docket No. SG-37825
05-3-03-3-194

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway 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 J. E. Rusak, for 8 hours at the Signal Maintainer's straight time rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Addendum 2 (National Vacation Agreement) of the Signalman's Agreement, when on January 14, 2002, it distributed more than 25 percent of the workload of a vacationing employee to the Claimant without providing a relief worker on the Rivanna Subdivision. Carrier's File No. 15-02-00092. General Chairman's File No. 02-46-CD. BRS File Case No. 12630-C&O(CD).”

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 Organization alleged that the Carrier violated Addendum 2 (National Vacation Agreement) when it required the Claimant to work more than 25 per cent of Signalmen Broughton's work load. The Addendum reads, in relevant part, as follows:

"10.(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee official."

The Organization points out on the property that the Claimant was sent over to work on Signalman Broughton's territory the entire day of January 14, 2002. Because Broughton was on vacation on January 14 and 15, 2002, the Claimant worked 50 per cent of the vacationing employee's workload in violation of Addendum 2. It points the Board to Third Division Awards 31250, 26063 and 20056 in support of its position.

The Carrier rebutted the Organization on all points, but most importantly that the Claimant performed regular signal maintenance work and not relief work for the vacationing employee. The Carrier challenged the Organization during the on-going dispute to produce evidence to support its position. It maintained that no violation of Addendum 2 occurred in this instance.

In a similar case, the Board noted that to sustain a claim such as this the Organization must put forth proof, as is its burden (Third Division Award 36178). As in that case, the Board fails to find the requisite evidence to demonstrate that the Claimant was performing work that belonged to the vacationing employee. An assertion is not fact and, when it is challenged without rebuttal, it must fail. The

Awards presented by the Organization are clearly distinct; in each of them, the Carrier either failed to rebut assertions, or the evidence to sustain the claim was presented.

The Carrier asserted that Lead Signalman J. W. Terrell was covering for the vacationing employee and that the Claimant was sent over to assist Terrell in performing regular signal maintenance work that did not belong to the vacationing employee. We find no rebuttal from the Organization or evidence to prove otherwise. In fact, we can not find in this record what work the Claimant performed or how that work related to the vacationing employee's position. Accordingly, finding no proof that the Claimant performed work that belonged to the vacationing employee, the claim must fail.

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 23rd day of June 2005.