

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37754
Docket No. SG-38093
06-3-03-3-538

The Third Division consisted of the regular members and in addition Referee James E. Conway 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. (formerly C&O, Chesapeake District):

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 (Vacation), when it distributed more than 25 percent of the workload of a vacationing employee to the Claimant without providing a relief worker on August 28, 2002. The vacationing employee's territory was on the Peninsula Subdivision from MP CA 27.8 to MP CA 53.4. The work consisted of securing the road crossing at Lightfoot Road, trouble shooting, and removing and replacing a damaged GCP 3000 grade crossing predictor. Carrier's File No. 03-0014. General Chairman's File No. 03-11-CD. BRS File Case No. 12759 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's October 24, 2002 claim asserts that the Carrier violated Addendum 2 of the Agreement when it required the Claimant to absorb in excess of 25 percent of the work load of a fellow Signal Maintainer on an adjoining territory while he took a vacation day.

The Carrier denied the claim on December 20, 2002 and again on appeal on March 28, 2003, stating in part as follows:

"The Organization has failed to prove the agreement was violated when CSXT used the claimant on the date at issue to perform basic signal maintenance work, which is not specifically reserved to any signal employee including vacationing employee Smith.

* * *

It is well recognized the heavy burden of evidence required by the Organization when pursuing claims filed in regard to the National Vacation agreement provisions. Not only should the claim contain the specific duties and time involved in doing the work of the vacationing employee, but also how the work assignment 'burdened' the remaining employee(s)."

In a case about the nature and volume of work performed and the manner in which it unduly burdens the Signaller to which assigned, no reliable determination can be made regarding violation without detailed and specific evidence. The state of this case as it comes before the Board is such that it plainly does not satisfy the standards established by prior arbitral authority applying the vacation provisions at

issue. See, e.g., Third Division Award 36178 involving the same parties and issue, in which the Board stated:

“The burden of proof lies with the Organization to make a prima facie case that the Carrier violated Article 10 (b). . . . To make a prima facie case the Organization must show with probative evidence that the Agreement specifications appear to be violated. . . .”

The Claimant asserts that he secured a road crossing, removed a damaged grade crossing predictor and did some trouble shooting on August 28. He fails, however, to indicate the time taken for those tasks or, because each involved basic signal maintenance work, that the assignments were an undue burden for him.

The record lacks the requisite proof to sustain the Organization’s claim for additional compensation on behalf of the Claimant. Accordingly, the claim will 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 21st day of March 2006.