

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37755
Docket No. SG-38107
06-3-03-3-537

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 Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Louisville & Nashville):

Claim on behalf of D. W. Simmons, for 13 hours at time and one-half, account Carrier violated the current Signalmen's Agreement, particularly Rules 1, 3, 4, 31 and 32, when on October 5, 2002, Carrier used a signal technician to take down a line wire(s) at Oak Street in Louisville, instead of using the Claimant who was a signal inspector and senior to the person Carrier used to perform the work.” Carrier's File No. 03-0008. General Chairman's File No. 02-13-7. BRS File Case No 12762-L&N.”

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 here asserts that the Carrier violated the Agreement on October 5, 2002, when it failed to offer the Claimant an opportunity to take down retired line wires and instead brought in an employee from another classification for 13 hours to perform that work. The Carrier takes the position that the Claimant in effect waived his opportunity for the overtime involved when he failed to make himself available for the morning conference call on which the work was assigned and otherwise failed to contact his supervisor in this regard.

In this instance, E. M. Witherspoon, Regional Engineer Signals, stated that he was contacted by Signal Supervisor Krauss explaining that a city employee needed to have some abandoned pole lines on CSXT property removed at various locations in Louisville, Kentucky, to permit him to do his work. Witherspoon states that such work is normally accomplished by outside contractors, but on this occasion none was available so he requested permission to bring in some of his own employees to do the work and earn additional money. Witherspoon agreed, and Krauss states that he asked for volunteers from his men on several occasions during his morning conference calls. The Claimant, he states, was present on more than one of these calls, but never expressed any interest in the opportunity. Krauss then selected several employees in seniority order from among the employees who asked to be considered.

Upon consideration of the record in its entirety, the Board concludes that no violation is established on the facts presented. With respect to the overtime bypass allegation, the evidence is inconclusive on the question of whether the Claimant was or was not on the conference calls when the work was offered. The Carrier offers no evidence to support its assertion that he missed the relevant calls, and the Claimant cannot establish that he participated. If the Carrier is correct, the Claimant had an obligation to take part in those discussions and was simply unavailable for the work that he now improperly claims. If, as he maintains, he participated, it was reasonable for the Carrier to assume that he was declining the

work offered, and he cannot now be heard to complain about the denial of that opportunity.

As has been often observed in analogous situations, given the appellate nature of this process, the Board is unable to resolve credibility disputes or evidentiary conflicts on critical factual issues. Accordingly, we find that the Organization failed to carry its burden of proof and must deny the claim.

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.