

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38085
Docket No. SG-38260
07-3-04-3-173

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

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

Claim on behalf of D. J. Schroeder, for Foreman’s pay for each day after March 2, 2002; All affected overtime in relation to the Foreman rate; Per diem of \$37.40 per day; Travel allowance of \$51.03 per week; 30 minutes additional for each day travel allowance; Vehicle driver’s pay for 1 hour each day at the Signalman’s rate; and \$15.00 a day past the agreed twenty day holding period which totals 8 days, account Carrier violated the current Signalmen’s Agreement, particularly Rules 47, Section 7, Paragraph D; Article II System Seniority, Section C. Bulletins, paragraph 2, when on February 26, 2002, the Claimant was awarded the System Signal Foreman position on Gang 7XD9. The Claimant was held on his former Signal Maintainer position until April 1, 2002. Carrier’s File No. 15(03-0016). General Chairman’s File No. SCW-01-02-03. BRS File Case No. 12945-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.

Prior to the advent of this dispute, the Claimant was assigned as a Signal Maintainer with headquarters at Deshler, Ohio. His position was scheduled to work from 7:00 A.M. to 3:30 P.M. with rest days of Saturday and Sunday. By bulletin notice dated February 15, 2002, a vacant position of Signal Foreman was advertised for bid. The bulletin notice indicated that applications for the Foreman position, which had a tour of duty from 7:00 A.M. to 5:00 P.M., Monday thru Thursday with rest days of Friday, Saturday, and Sunday, would be accepted until February 25, 2002. By notice dated February 26, 2002, the Claimant was assigned to the Foreman position effective March 4, 2002.

The Carrier, however, did not release the Claimant from his Signal Maintainer position until March 28, 2002. He observed the rest days of the Signal Foreman position on March 29, 30, and 31, 2002. He assumed the Signal Foreman position on Monday, April 1, 2002.

The Agreement Rules which are applicable in this dispute read, in pertinent part, as follows:

"RULE 47
ASSIGNMENTS - HOW MADE

* * *

(d) If the successful applicant is not transferred to the new assignment within five (5) days after the date of the assignment bulletin through no fault of his own his compensation will be equal to what he would have earned on the new assignment, but not less than what he receives on the old assignment; if not transferred within twenty (20) days after the date of the assignment bulletin

through no fault of his own, he will thereafter be paid one dollar (\$1.00) additional for each day worked until transferred."

CSXT Labor Agreement No. 15-18-94 - Article II-C. BULLETINS

* * *

(2) If the successful applicant is not released within 20 calendar days of the assignment date as listed in the award bulletin through no fault of his own, he will thereafter be paid \$15.00 for each day worked until transferred."

The Organization argued that from March 4 until April 1, 2002, the Claimant should have been compensated at the Signal Foreman's rate plus per diem allowances, travel allowances, vehicle driver's pay and \$15.00 per day "past the agreed twenty day holding period which totals eight days."

The Carrier contended that during the period from March 4 until March 28, 2002, the Claimant earned more on the Signal Maintainer's position than he would have earned on the Signal Foreman's position. The Carrier insisted that inasmuch as the Claimant's compensation was equal to what he would have earned on the new assignment, the requirements of Rule 47(d) have been met.

From the Board's review of the case record, there is nothing found in the way of evidence or proof to support the argument that the claimed per diem allowances, travel allowances and driver's pay allowances would have been applicable to the Claimant inasmuch as he was not actually working on a position to which such allowances would have attached. The Organization's argument in that regard is speculative and cannot be supported.

However, the language of ARTICLE II-C. BULLETINS is clear, unambiguous, and applicable to the fact situation in this case. The Claimant was not released from his former position within 20 calendar days of the assignment date as listed in the award bulletin. The assignment date was March 4, 2002. Twenty calendar days of the assignment date was March 24, 2002. Thereafter, the Claimant worked on his former position on March 25, 26, 27, and 28, 2002, and is entitled to the allowance provided by Article II-C for each of the four days worked until transferred.

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 21st day of February 2007.