

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38961
Docket No. SG-38385
08-3-NRAB-00003-040340
(04-3-340)

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**CSX Transportation, Inc**

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 B. E. Tumlin and C. O. Smith, for 24 hours at the straight time rate for B. E. Tumlin, and 2 hours at the straight time rate for C. O. Smith, account Carrier violated the current Signalmen’s Agreement, particularly Article 10(b) of the National Vacation Agreement, when they were required to work more than 25% of the vacationing maintainer’s workload during his vacation period of April 28, 2003 through May 2, 2003. The Claimants worked a total of 26 hours on the vacationing maintainer’s territory. Carrier’s File No. 03-0064, General Chairman’s File No. 03-178-8. BRS File Case No. 12866-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 filed the instant claim on the Claimants' behalf, contending that the Carrier violated the current Signalmen's Agreement by requiring the Claimants to work more than 25 percent of the vacationing Maintainer's workload during his vacation period.

The Organization initially points out that one of the two original Claimants, C. O. Smith, was dropped during the progression of the claim, leaving B. E. Tumlin as the sole Claimant here. The Organization contends that the record shows without dispute that while Maintainer Bussie was on an approved one-week vacation, the Carrier chose not to provide a relief employee, but instead directed the Claimant to work the vacationing Maintainer's assignment during regular straight-time hours to cover his workload. Under the direction of his supervisor, the Claimant was required to suspend duties on his own assignment to work on the vacationing employee's position. The Organization asserts that the Claimant therefore was required to work more than 25 percent of the vacationing Maintainer's workload; the Claimant worked 24 hours, or more than 50 percent of his workload for the week in question.

The Organization maintains that the Carrier took the erroneous position that the claim was based on overtime trouble calls for working more than 25 percent of the vacationing Maintainer's workload, which cannot be used when determining the percentage of hours worked. The Organization emphasizes that the Carrier's reasons for denying the claim obviously were fabricated, and they certainly are not representative of the provisions of Article 10(b). The Organization insists that the record clearly shows that the Carrier instructed the Claimant to work with the Track Department, in testing, inspecting, and troubleshooting.

The Organization asserts that when more than 25 percent of the assignment of the vacationing Maintainer is filled by two or more employees, such employees

will be paid the additional compensation at their own respective rates. The Organization contends that in the instant case, the Carrier had the option to supply a relief worker to cover the assignment of the vacationing Maintainer, but instead chose to utilize the adjoining Maintainers to work the assignment and cover the workload. The Organization emphasizes that Article 10 makes no distinction between regular assigned work hours and overtime hours, when a relief employee fills the vacancy of a vacationing employee's assignment. The same non-distinction applies when other employees suspend their work to absorb the work of the vacationing employee.

The Organization argues that in defending against this claim, the Carrier alleges a defense that is a fabrication and not based on the stipulations of the Agreement. The Organization further insists that there is no foundation to the Carrier's position that the claim is invalid because the Organization had not precisely detailed what tasks were performed and how long each task was performed. The Organization contends that the Carrier obviously violated the Agreement by requiring the Claimant to absorb more than 25 percent of the vacationing employee's workload for the time period in question. As recognized in prior Awards, the Carrier violated the Agreement by placing an additional burden on the Claimant by requiring him to be away from his regular assignment to cover a vacationing employee's workload for more than 25 percent of the time the employee was on vacation. The Organization emphasizes that the Rule does not apply only to regular maintenance duties, but to all work on the vacationing employee's assignment.

The Organization emphasizes that the Board repeatedly has confirmed that when a Carrier does not assign another employee to relieve a vacationing employee, it is a violation of Article 10(b) to distribute more than 25 percent of the vacationing employee's workload to other employees, as it did in the instant case. The Claimant therefore is entitled to additional compensation under Article 10(b) for absorbing the work of the vacationing employee.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier initially contends that the Organization failed to prove that the Carrier violated the Agreement when it used the Claimants to perform basic signal maintenance work, which is not specifically reserved to any signal employee, include the vacationing Maintainer. The Carrier asserts that the Organization's appeal and subsequent letters failed to provide sufficient evidence as support for the claim. The record is completely void of any specific Agreement language or provision that supports the Organization's position. The Carrier emphasizes that there is no evidence to show what work was performed by the Claimants or the duration of time involved in each task, nor was there any showing of how the Claimants were burdened by the assignment of work. Moreover, the Organization failed to produce evidence suggesting that the Claimants' and the vacationing employee's territories and work are exclusively assigned to each respective employee. The Carrier points out that the Organization did not assert that the Claimants required help or needed to work overtime to perform their normal assignment.

The Carrier argues that the Claimants performed the signal work that needed to be performed while the other Signal Maintainer was on vacation. The Carrier asserts that the existing work force was more than sufficient to perform the needed signal work, and there is no evidence that they were burdened by this work assignment. The Carrier insists that the Organization failed to establish facts that would justify the award of additional payments to the Claimants. The Carrier contends that the Organization failed to meet its heavy burden of proof in this matter by failing to show the pertinent facts necessary to perfect the claim.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Board reviewed the record in this case, and we find that the Organization failed to meet its burden of proof that the Carrier improperly paid the two Claimants for the work that they performed between April 28 and May 2, 2003. The record reveals that the claim does not contain the specific duties and time involved in doing the work of the vacationing employee, nor did the Organization provide any evidence that the vacationing employee's territories and work were exclusively assigned to each respective employee. It is fundamental that when the Organization files a claim, it must provide details of the circumstances to show how

the Claimants were improperly paid by the assignment of the disputed work. There is no showing that the Claimants were "burdened" by the assignment of the disputed work. There is simply insufficient evidence to justify the awarding of additional compensation to the Claimants.

With respect to the claim of Claimant Smith, the Organization conceded that it mistakenly included overtime as part of its calculation; and when the corrections were made, the monetary value of the claim was reduced by two hours, from 26 to 24 hours. The claim of Claimant Smith was eventually dropped during the progression of the claim.

It is fundamental that when a claim is filed, the Organization must come forward with sufficient evidence to meet its burden of proof. In this case, there was insufficient evidence produced by the Organization to allow the Board to sustain the claim. Therefore, the claim must 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 29th day of February 2008.