

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.
(former Louisville & Nashville Railroad)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Railroad
(formerly the Louisville and Nashville Railroad);

On behalf of Brother D. L. Cassidy, for 24 hours pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, APPENDIX 'R', when it failed to fill 1st trick position, at Boyles Yards on March 7, 8, and 9, 1988." Carrier file 15-R/T (88-41).

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant held a first shift Signal Maintainer position Monday through Friday at the Carrier's Boyles Yard in Alabama. On March 7, 8 and 9, 1988 (Monday, Tuesday and Wednesday, respectively) another first shift Signal Maintainer laid off. The Carrier did not fill the vacancy but utilized other first shift Signal Maintainers working at the time to perform the work of the position. The claim in this case followed.

As a defense to the claim the Carrier raises the objection that Claimant cannot recover the monetary amount sought by the claim inasmuch as Claimant worked the first shift on March 7, 8, and 9, 1988, and was compensated therefor. The Carrier argues that Claimant would be entitled to no additional compensation if he had been used to fill the first trick position vacant as a result of the incumbent's layoff. Thus, urges the Carrier, Claimant is not a proper Claimant.

We believe the Carrier's point is well taken. Without regard to the question of whether the record in this case substantiates the claim, it is clear that Claimant cannot recover under any theory. Claimant worked the same shift on which the vacancy occurred on March 7, 8, and 9, 1988, and Claimant received straight time compensation for such work. To award Claimant an additional twenty-four hours would be to award Claimant double time.

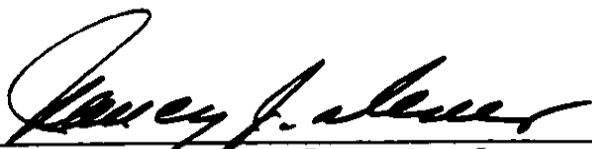
This case is distinguishable from the Awards relied upon by the Organization to support its claim for damages. In each of those Awards the Claimant was found to be entitled to compensation in the amount he would have received had the Carrier followed the Agreement. Assuming, arguendo, that the Carrier was required to fill the vacancy and further that Claimant would have been entitled to fill the vacancy, the Agreement would not have entitled Claimant to any more compensation than he actually received. Accordingly, the Board is without authority to order additional compensation for Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.