

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30077
Docket No. SG-30009
94-3-91-3-398

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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 CSXT, INC (L&N):

Claim on behalf of M. Y. Adams and R. L. Collins, for payment of one-hundred-ninety (190) hours pay each, at their respective rates of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rules 32, 46, 49, 50 and 68, when it used these employees to perform work other than listed in Rule 68(b), between May 1st, and June 14th, 1990." Carrier File No. 15 (90-70). BRS Case No. 8373-CSXT.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 employe or employes involved in this dispute are respectively carrier and employe 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.

This dispute was initiated when the Carrier allegedly violated the Agreement, specifically Rules 32 (Seniority Districts), 46 (Bulletining Positions and Return from Illness), 49 (Form of Advertising Bulletin), 50 (Form of Assignment Bulletin) and 68 (Make-Up of Gangs) when it "used two employees, a Lead Signalman and a Signalman, to perform the regular duties of the Claimants." The claim was submitted on behalf of Signal Maintainers M. Y. Adams and R. L. Collins.

In a bulletin dated December 28, 1989, Carrier posted the following positions:

"CSX TRANSPORTATION
OFFICE OF ENGINEER-SIGNALS ATLANTA DIVISION
ATLANTA, GEORGIA DECEMBER 28, 1989

BULLETIN NO. AS-145: ****CORRECTION****

TO: ALL CONCERNED: K&A SENIORITY DISTRICT:

THE FOLLOWING POSITION(S) ARE HEREBY ADVERTISED IN ACCORDANCE WITH THE SIGNAL EMPLOYEE'S AGREEMENT. APPLICATIONS SHOULD BE SENT TO THE UNDERSIGNED WHERE THEY WILL BE RECEIVED UNTIL 1200 HOURS, FRIDAY, JANUARY 12, 1990.

TITLE OF POSITION	1-LEAD SIGNALMAN-GANG (TO BE ASSIGNED)
HEADQUARTERS	1-SIGNALMAN-GANG (TO BE ASSIGNED)
EXISTING RATE OF PAY	MOTELS - LINE OF ROAD \$14.24 PER HOUR - LEAD SIGNALMAN \$14.13 PER HOUR - SIGNALMAN
ASSIGNED HOURS	0730 TO 1830
ASSIGNED WORK DAYS	MONDAY THRU THURSDAY
MEAL PERIOD	PER RULE 11 OF THE AGREEMENT
VACATED BY	NEW POSITIONS
ASSIGNED TERRITORY	ETOWAH SUBDIVISION
DESCRIPTION OF DUTIES	GENERALLY RECOGNIZED AS LEAD SIGNALMANS AND SIGNALMANS WORK PER RULES 5 AND 7 OF THE CURRENT WORKING AGREEMENT
TEMPORARY/PERMANENT	PERMANENT

CLOSING TIME AND DATE ARE FINAL. APPLICANT MUST HAVE A VALID DRIVER'S LICENSE.

EACH SUPERVISOR MUST MAKE COPIES FOR DISTRIBUTION TO THEIR DIVISION AND FURLOUGHED EMPLOYEES HOME ADDRESS.

N. M. CHOAT
ENGINEER-SIGNALS

CC: MR. E.M. WITHERSPOON - ENB
MR. J.F. KELLEY - CVB
MR. D.M. KRESS - ENA
MR. J.W. MABE - UFA

MR. B.M. WILSON - GC-BRS
MR. M.D. WARNER - LC-BRS
MR. J.A. MCCRORIE - UFA
SIGNAL SHOPS - SZB

MR. N. M. CHOAT, ENGINEER-SIGNALS, CSX TRANSPORTATION, INC."

On January 12, 1990, the permanent position of Lead Signalman was awarded to L. B. Kitts, seniority date February 14, 1977. The Signalman's position was awarded to J. B. Smith, whose seniority date is June 4, 1985. In accordance with Rule 49 of the Agreement, Mr. B. M. Wilson, General Chairman of the Brotherhood of Railroad Signalmen, and Local Chairman M. D. Warner were "copied" on each bulletin.

The General Chairman maintains that he "did not see" either of the bulletins at time of issuance on December 28, 1989, or January 12, 1990. However, the General Chairman concedes that he was "made aware of the postings" in mid-January 1990 by one of the employees from the Seniority District who had been displaced. The General Chairman immediately contacted Signal Engineer Choat regarding the positions at issue. According to the General Chairman, a full discussion of various aspects of the alleged Agreement violations ensued, but apparently no mutually satisfactory resolution was achieved. Subsequent to this reported interchange in January 1990, there is no evidence on this record of any further discussion regarding these positions until June 21, 1990.

On June 14, 1990, the Organization submitted a claim, on behalf of Signal Maintainer J. E. Carruth, to which File No. 90-158-06 was assigned. That claim was declined on July 18, 1990. On June 21, 1990, the Organization submitted the instant claim on behalf of Signal Maintainers Adams and Collins. Unfortunately, this claim was miscaptioned by the Organization with the same file number as the previously declined and unrelated claim of June 14, 1990, i.e., "File: (90-158-06)." It was not until September 28, 1990, that the Organization became aware of its error concerning the duplicate file numbers, and sent a "letter of explanation" to the Carrier stating that the claim submitted on June 14, 1990 had now been assigned File No. (90-208-06), in lieu of the original File No. (90-158-06).

On October 4, 1990, the Organization sent additional correspondence to the Carrier which was an "appeal of the continuous claim filed with Division Engineer DeLong in a letter dated June 21, 1990." The Organization submitted that it had not seen "the actual bulletin of December 28, 1989 until May 1990," and therefore, "the claim is continuous commencing May 1, 1990 through June 14, 1990." In subsequent correspondence, the Organization extended the claim date through November 1990. In conjunction with the aforementioned Rules of the Agreement, the Organization also cited Carrier for being in "violation of Rule 54 (Time Limits for Handling Claims) when Carrier failed to respond to the original claim letter of June 21, 1990 within the sixty (60) day time limit." The Organization also included a copy of the certified mail return receipt which Carrier Officer Waldrop had signed on June 25, 1990. Carrier responded asserting that: "You changed

your claim file number for the benefit of your office, and, upon appeal of the second claim you filed with the same file number, someone in the Division Engineer's Office obviously assumed it was a duplication and did not place it in line for response...."

On October 25, 1990, Carrier again denied the claim, asserting that although Carrier Officer Waldrop had signed the receipt, there was "confusion" due to the duplicate File No. 90-158-06. Carrier "believed it had already replied" to the Organization concerning the dispute. Further, Carrier maintained that: "By his own admission, Chairman Wilson was aware of the bulletin at issue in January, 1990, and did not file a claim within the sixty (60) day time limit as called for in Rule 54."

The Parties continued to correspond through February, 1991. Neither Party departed from its original position.

Before we consider the merits of this claim, we must first rule on the Carrier's assertion that this matter is barred under the time limit provision as provided for in Rule 54 of the Agreement.

According to Rule 49 of the Agreement, a copy of all bulletins must be sent to both the Local and General Chairman of the Organization. The General Chairman did not dispute Carrier's assertion that the bulletin was properly distributed, stating only that he "did not see" the bulletin until May 30, 1990. The General Chairman may not have seen the record notice of the December 28, 1989 and January 12, 1990 bulletins until May 1990 but, by his own admission, he had actual notice in mid-January, 1990. The General Chairman discussed the positions at issue with the Signal Engineer but, for reasons not clear on this record, chose not to file a claim until June 21, 1990. Nor can the glaring time limit problem be cured by the Organization designating this as a "continuing claim." The instant dispute does not involve a continuing claim as that concept is understood in arbitration in this industry. Continuing claims are designed to avoid a multiplicity of claims, eliminating the need to file a new claim for the daily recurrence of a repetitive violation such as improper wage payment for a position. The bulletin which constituted the gravamen of this claim was time specific--December 28, 1989--with the positions being awarded on January 12, 1990. Therefore, this cannot be considered a "continuing claim."

The Organization also has not persuasively demonstrated a fatal time limit violation by Carrier. Assuming, arguendo, that the claim had been timely filed, close examination of the record shows that the duplicate file number which the Organization assigned to two claims, was sufficiently confusing to justify

Carrier's belief that it had already denied the later-submitted claim on behalf of Messrs. Adams and Collins.

Based upon the foregoing, this claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of March 1994.