

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34220
Docket No. SG-35071
00-3-98-3-814**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Company (former Louisville & Nashville Railroad):

Claim on behalf of B.J. Harnishfeger for payment of 20 hours at the time and one-half rate and three hours at the double time rate, account Carrier violated the current Signalman’s Agreement, particularly Rules 4, 7, 16, 17, 18, 19, 31, 32, 51, 52, 53 and 66, when it did not compensate the Claimant for his service on October 4 and October 17, 1997. Carrier’s File No. 15(98-6). General Chairman’s File No. 97-137-13. BRS File Case No. 10734-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.

This claim filed on November 17, 1997, alleges that the Agreement was violated when the Carrier assigned the Claimant to perform non Scope-covered work on a seniority district on which he did not hold seniority and failed to properly compensate the Claimant for overtime service performed on October 4 and 17, 1997.

The record contains numerous assertions by the Organization and a multitude of alleged Rule violations relating to the Claimant's performance of work on October 4 and 17, 1997, his scheduled rest days. The Claimant was employed as a Signal Technician, who occasionally acted in a supervisory capacity. The Carrier set forth facts concerning the Claimant's work on the claim dates that were unrebutted by the Organization. The Claimant was not instructed to report to work on October 4, 1997 by the Carrier official. Rather, Signal Maintainer Hinton unilaterally and without the Carrier's knowledge or authorization, contacted the Claimant to accompany him on that date. The Carrier argues that it is not liable for any violation that may have occurred by the employee calling the Claimant or the Claimant working (perhaps in violation of the Hours of Service Act) when not authorized, citing Third Division Awards 12951 and 12949. The Organization contends that it is impermissible for the Carrier to enter into an individual Agreement with an employee.

With respect to October 17, 1997, the Carrier asserts without challenge that the Claimant followed the supervisor to work voluntarily without being called to perform any services. It relies on Public Law Board No. 21, Award 54 for the proposition that voluntary service cannot support a claim.

A review of the record reveals a glaring lack of probative evidence introduced by the Organization to support its allegations. First, the Claimant himself never submitted a claim for time worked or overtime payment (or meals) to the Carrier for October 4 or 17, 1997. Second, there is no statement from the Claimant whatsoever that would indicate whether, in fact, he performed any work for the Carrier on the dates in question or what the nature of that work may have been. Thus, the Organization failed to prove that the Claimant performed non Scope-covered work, as alleged, or that the Carrier failed to compensate him for additional work performed under the Agreement.

The Board notes that although the General Chairman cited numerous Rules on the property, he failed to explain how any of them were applicable. It is not the Board's

Form 1
Page 3

Award No. 34220
Docket No. SG-35071
00-3-98-3-814

role to try to uncover how the cited Rules apply to the set of facts presented. It is the Organization's responsibility to show, on the property, how each cited Rule applies and how it has been violated under the facts presented. It failed to do so in this case.

Accordingly, the claim must be denied on the basis of the Organization's failure to sustain its burden of proof.

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 23rd day of August, 2000.