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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35365
Docket No. SG-35051
01-3-98-3-813**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 C. J. Kays for payment of \$34 per day and payment of any overtime accruing to the Signal Maintainer position at Montgomery, Alabama, beginning September 11, 1997, and continuing for the term of the violation, account Carrier violated the current Signalmen's Agreement, particularly rules 1, 7, 46 through 50, 66, and Agreement No. 15-60-95, when it did not utilize the Claimant to fill the Signal Maintainer position at Montgomery when the incumbent on that position was awarded another position. Carrier's File No. 15(98-8). General Chairman's File No. 97-137-10, BRS File Case No. 10733-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.

On or about August 8, 1997, the Carrier advertised the position of Lead Signalman on Gang 7M24, headquartered at Mobile, Alabama. On September 11, 1997, the position was awarded to Signal Maintainer J. L. Blackwood, Jr. When Blackwood was awarded the Lead Signalman's position on Gang 7M24, he was working as a Signal Maintainer at Montgomery, Alabama. He continued to work this position until October 20, 1997, when he assumed the Lead Signalman's position on Gang 7M24.

On October 14, 1997, the Organization filed a claim on behalf of the senior Signalman on the District Signal Gang at Mobile, Alabama. The Organization argued that this employee should have been assigned to the Signal Maintainer's position at Montgomery after the incumbent of that position (J. L. Blackwood, Jr.) was awarded the Lead Signalman's position on Gang 7M24. The Organization contends that the Claimant is entitled to \$34.00 per diem for each day that he was not assigned to the Signal Maintainer's position, as well as the overtime earned by Blackwood while he continued to work this position.

Rule 47(a) of the Agreement between the parties provides that assignments to new positions or vacancies shall be made within 20 days after close of the advertising bulletin. There is no question that Blackwood was not placed on the Lead Signalman's assignment within 20 days after close of the advertising bulletin. However, the Carrier explained that it did not place Blackwood on his new assignment until October 20, 1997, because there was extensive work on his former territory and no employee wanted to work his Signal Maintainer's position. Rather than force an employee to this position the Carrier held Blackwood on it until the work was completed.

Under the circumstances of this case, it appears that the Carrier acted prudently in holding Blackwood on his Signal Maintainer's position after he was awarded the Lead Signalman's position on Gang 7M24. Even if this violated Rule 47(a) the Claimant would not be entitled to the damages sought herein. It is unrefuted in the record that the Claimant had multiple opportunities to work the position and declined to do so on every occasion.

Nor is the Claimant entitled to a per diem allowance under CSXT Labor Agreement 15-60-95 because he was not held away from his headquarters and he did

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**not incur any meal, lodging or transportation expenses during the claim period.
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 20th day of March, 2001.