

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35574
Docket No. SG-35274
01-3-99-3-126**

The Third Division consisted of the regular members and in addition Referee Dana E. 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 CSX Transportation Co. (former Louisville & Nashville Railroad):

Claim on behalf of B.M. Frederick, C.M. Miller, R.L. Collins, C.D. Mills, T.F. Branch, L.B. Kitts, J.R. Lennon, J.W. Hatfield, J.M. Hendrickson Jr., J.O. Herren, E.D. Pollitte, K.D. Hunt, C.B. Meadors, J.S. Smith, and W.H. Smith for payment of a total of 666 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 3, 4, 7, 16, 17, 18, 31, 32, and 51, and Agreement 15-122-93, when it used other employees instead of the Claimants to perform overtime service in their seniority district from January 31 to March 14, 1998. Carrier’s File No. 15(98-146). General Chairman’s File No. 98-158-10. BRS File Case No. 10777-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 Claimants, who are all employed as Signalmen in Signal District No. 3, claim a total of 666 hours at the overtime rate, alleging that the Carrier wrongfully utilized other signal employees to perform overtime work in District No. 3 during the period January 31 through March 14, 1998. The Carrier denied the claims on grounds of failure of proof as to any date after February 9, 1998 and asserting that utilization of strangers to District 3 from February 4 until February 9, 1998 to assist the Claimants, who were already working overtime during that period to restore pole line signal circuits disabled by a major winter storm, was justified due to the "emergency" situation.

At the outset, the claims of Miller, Collins and Frederick are dismissed because they duplicate claims for the same issue and period of time and have been previously handled to conclusion. See Third Division Award 32337, citing Second Division Awards 12922, 12343, 11999, 11394. As for the remainder of the claims, the Carrier adduced probative evidence to support its affirmative defense of "emergency" for the period February 4-9, 1998. See Third Division Awards 19236 and 28643. As for the other dates of alleged violation, discounting evidence introduced de novo at the Board level and thus too late for our consideration, the Organization failed to prove its claims by a preponderance of the record evidence. In that connection, the Organization failed to show that the Carrier continued to use the non-District 3 signal employees to do anything in District 3 after the emergency was resolved with restoration of signal service on February 9, 1999, except for the return of the Signal Construction Gang to the pole line construction in which they were properly engaged prior to being diverted to assist the Claimants through the winter storm emergency.

AWARD

Claim denied.

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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 24th day of July, 2001.