

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36178  
Docket No. SG-35796  
02-3-99-3-797**

**The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc.**

**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 T. F. Branch for payment of 24 hours at his time and one-half rate and L. B. Kitts for payment of 16 hours at his time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Article 10(b) of the National Vacation Agreement, when it distributed more than 25 percent of the workload of a vacationing employee to the Claimants from August 3 through August 7, 1998, without assigning a relief employee. Carrier’s File No. 15(98-356). General Chairman’s File No. 98-158-15. BRS File Case No. 10976-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.**

Under date of September 22, 1998, the Organization alleged a violation of Article 10(b) of the National Vacation Agreement when the Carrier required Claimants T. F. Branch and L. B. Kitts to work assigned territory of Signal Maintainer K. D. Hunt who was on vacation. The Organization alleged that the two Claimants performed service more than 25 percent of the time on the assigned territory of the vacationing employee. The Organization maintained that Claimant Kitts:

“was used to repair a broken wire at Bull Run cut by tampers on 8-3-98, and continued to work with these tampers over the next four days. He also was worked at Dossett Tunnel bonding and a track light from Clinch River to Dossett.

Claimant Branch worked from Mile Post C-259 to C-272.5, during this same week with the Maintenance of Way Department.”

The Carrier denied any Agreement violation in its letter dated November 18, 1998. It stated that no violation occurred because:

“A large scale Track Structure Capitalization (TSC; timber and surface) was underway on the KD Subdivision. It is customary that adjoining maintainers assist maintainers where TSC work is occurring. In this instance maintainers Branch and Kitts would have been working on territory assigned to K. D. Hunt whether K. D. Hunt was on vacation or not, thus nearly all the work performed by maintainers Branch and Kitts was not relief work.”

The Carrier maintains that it did not violate the Rule in that the work was not relief work.

The Board reviewed the Rule and facts at bar. The Organization denied that the work was not “relief work.” By letter dated November 30, 1998, the Organization rejected the Carrier’s argument, supra, in that “the work performed by Kitts and Branch was relief work under the provisions of this rule.” There is nothing further in this record except a conference indication that the Carrier maintained that although the Claimants were required to work the vacationing employee’s territory, “they should not be penalized as they had a maintenance of way gang working on that territory.”

The burden of proof lies with the Organization to make a prima facie case that the Carrier violated Article 10(b). It states:

**“Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.”**

The Board finds that Signal Maintainer Hunt was on vacation from August 3-7, 1998. The Carrier had a right under the above cited provision to blank the position and it did so. Thereafter, the Carrier could utilize relief workers on the vacationing employee's territory so long as the quantity of work was not distributed to two or more employees and did not total more than 25 percent.

To make a prima facie case the Organization must show with probative evidence that the Agreement specifications appear to be violated. That it has done. There are two Claimants who worked the vacationing employee's position and they did so for more than 25 per cent. The problem in this case is that the Carrier denied that the work performed was relief work for either of the Claimants. It argued that the Claimants performed primarily work that was clearly specified as TSC work and would have been customarily performed by them whether or not Hunt had been on vacation or was working on his assigned territory.

In order to sustain its claim, the Organization was required to put forth sufficient evidence to prove that this was not TSC work. The Organization failed to engage the Carrier's rebuttal with any statement whatsoever that squarely denies that these Claimants would have been performing work that was not TSC work. The Carrier's denial was a soundly refuted statement never shown by the Organization with any clarity or by virtue of any evidence to have lacked merit. The Organization bares the ultimate burden of proof. Saying this is relief work does not make it so, nor does constant repetition take the place of proof. Nowhere does the Organization provide statements from the Claimants or from anyone that the work performed was relief work of vacationing Signal Maintainer Hunt. Nowhere in this record do we find any evidence that the work at the Dosset Tunnel or with the tampers was “relief work” or that Article

**10(b) was applicable to TSC work. As such, the claim lacks the requisite proof and 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 August 2002.**