

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36202
Docket No. SG-36279
02-3-00-3-504

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (formerly Louisville & Nashville Railroad):

Claim on behalf of M. J. Clayton, J. L. Tucker, R. L. Stonecipher, G. L. Catlett, B. W. Harris, J. J. Caudill, C. L. Womack, J. B. Gunn, Jr., K. L. Brooks, W. A. Seagraves, Jr., E. H. Reeves, D. L. Pitts, J. W. Norcross, C. D. Ballard, P. W. Stephens, G. Taylor, L. O. Carraway, M. T. Morel, T. B. Smith, S. T. Marlow, T. D. Pruett, and A. F. Dziedzic for payment of \$2,147.84 each. Account Carrier violated the current Signalmen's Agreement, particularly Rules 51, 31, and 32, when beginning on August 14, 1999 and continuing through September 27, 1999, Carrier allowed employees assigned to System Signal Gang No. 7X44, 7XD7, and 7XD6 to perform work, not covered under Rule 51, on Seniority District No. 9, and deprived Claimants of the opportunity to perform this work. Carrier also violated Rule 54 of the current Agreement when it failed to respond to the initial claim in a timely fashion. Carrier's File No. 15-99-0241. General Chairman's File No. 99-208-14. BRS File Case No. 11444-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 dispute concerns the Carrier's use of System Signal Construction Gangs ("System Gangs") to work with a Maintenance of Way System Production Tie and Surfacing Gang ("Tie Gang") from August 14 to September 27, 1999.

Specifically, 23 employees from three System Gangs were assigned to work in conjunction with the Tie Gang installing new ties and surfacing track on District 9 of the former L&N Railroad. The work performed by the System Gang signals and signal apparatus, and cleaning up and hauling scrap material.

Of note, the Organization asserts that General Chairman Wilson filed a claim with regard to the above work on December 13, 1999. However, the Carrier maintains that there is no record of the December 13, 1999 correspondence. Thereafter, the General Chairman filed an appeal alleging that Rules 31, 32 and 51 were violated when the System Gangs were used to work in conjunction with the Tie Gang from August 14 to September 27, 1999.

Specifically, the General Chairman maintained that the System Gangs were "precluded" from performing the "routine maintenance work" and further maintained that the amount paid to System Gang personnel(\$47,252) should be evenly divided and paid to the 23 employees working District Signal positions on Seniority District 9. Finally, the General Chairman contended that the claim was a "continuous claim" to include "all dates following those listed that these System Gangs are used in violation of the Agreement rules." Finally, the General Chairman maintained that the Organization's position was supported by past practice, citing letter Agreements from 1968 and 1984.

The Carrier denied the claim contending that pursuant to Rule 51, it has the right to use system construction forces to perform any construction work which is defined as work that involves the installation of new equipment and systems and the major revision of existing systems, not the normal routine maintenance required to have existing systems operating at maximum efficiency. Furthermore, the replacement of existing systems may also be considered construction work. It further noted that the work at issue involved a major revision to the existing track structure and signal system, as evidenced by the Organization's contention that as many as 23 employees suffered a loss of work opportunity, which clearly demonstrated the work at issue could not be considered "normal maintenance."

This dispute is one of three claims submitted by the Organization, each of which involves the same issues, Claimants and work project, and differ only with respect to the claim dates. For the reasons set forth more fully in companion Third Division Award 36206, this claim is denied.

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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 24th day of September 2002.