Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36687
Docket No. SG-36398
03-3-00-3-654

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chicago and
(Eastern Illinois Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (formerly C&EI):

Claim on behalf of E. A. Jarvis, R. A. Blacketer, N.L. Blakely, D. J. Norman, J. L. Denny, M. L. Eldridge, J. E. Batton, J. M. Phillips, L. R. Cundiff, V. P. Thomas, M. R. Heck, T. A. Reed, R. J. Birkenfeld, S. F. Sievers and A. E. Sheppard for restoration and payment of Test Period Averages (TPA) effective in August of 1999 and continuing until Carrier removes L&N forces from the C&EI property. Account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 10; CSXT Labor Agreement No. 15-60-95; and the Extension Agreement dated July 28, 1998 when beginning on September 24, 1999, and continuing, Carrier denied TPA payments to the Claimants. Carrier also violated Rule 54 when the designated Carrier Officer failed to respond to the initial claim. Carrier's File No. 15 (00-0004). General Chairman's File No. 99-25-04. BRS File Case No. 11456-C&EI."

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.

At the outset, this claim alleges a fatal violation by the Carrier of Rule 54 - Time Limits for Handling Claims, which cannot be understood without first discussing the merits. As presented on the property, the merits of this case presented an appeal of the Carrier's denial of claims for TPA guarantees ranging from $150.00 to $1,000.00 for the month of August 1999, filed by Signal Maintainers on the former C&EI territory ("Claimants") under the terms of CSXT Labor Agreement No. 15-60-95 and the Extension Agreement of 15-60-95, dated July 28, 1998. By letter of October 29, 1999 to Signal Engineer E. M. Witherspoon, BRS General Chairman B. M. Wilson appealed Director of Protection Comiskey's September 24, 1999 timely denial of those August 1999 TPA claims.

By letter dated December 14, 1999, General Manager Signal Construction R. Klein responded that he believed the October 29, 1999 TPA denial appeal should have been sent to CSXT Employee Relations rather than to the Signal Department. However, he then went on to deny the instant appeal on grounds that the Carrier's utilization of the L&N Signal Construction Gang on the C&EI in August 1999 had been appropriate under the terms of the December 14, 1998 Agreement (CSXT Labor Agreement No. 15-93-98) because the Extension Agreement had expired by its own terms without any further extensions to CSXT Labor Agreement No. 15-60-95. In further appeals, the General Chairman asserted that General Manager Klein's December 14, 1999 denial of his October 29, 1999 "continuing" claim had been procedurally and substantively defective under Rule 54 and that the Extension Agreement did apply; not only by its terms but, because it had been further extended beyond its original term by a verbal agreement during a meeting between representatives of the Parties in Lewisburg, West Virginia. The claim as thus joined was denied by the Carrier and remained unresolved through all handling on the property.

The Organization seeks payment of the claim "as presented", on grounds that the December 14, 1999 denial by General Manager Klein of the claim filed on October 29, 1999 with Signal Engineer Witherspoon was ineffective under the following language of Rule 54 - Time Limits for Handling Claims:

> "a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances." (Emphasis added)

The emphasized language supra, has resulted in a sharp split of authority in Third Division precedent concerning whether the word "Carrier" in the second sentence is synonymous with the phrase, "the officer of the Carrier authorized to receive same" in the first sentence. This is an unfortunate but predictable consequence flowing from the mutual habit of parties in Railway Labor Act arbitration to "forum shop" and endlessly litigate matters which should long ago have been definitively settled in the interest of stable and mature labor-management relations. Given the facts of record in the instant case, we decline to contribute to the existing divergence of arbitral precedent on that issue.

Despite the volume, confusion, needlessly convoluted complexity and unwarranted vituperation contained in the case file in this matter, the very narrow merits issue handled on the property and presented for determination to the Board simply is whether the Carrier was bound by the terms of CSXT Labor Agreement No. 15-60-95 and the Extension Agreement of 15-60-95 dated July 28, 1998, when it utilized L&N signal forces on C&EI territory, commencing in August 1999, to perform work on "Project 467466 and the Haley Interlocker/Conrail" which is listed in Attachment "A" of the 1998 extension to CSXT Labor Agreement No. 15-60-95. For that reason, the Organization's unsupported alternative theory that Rules 1 and 10 of the C&EI Agreement of 1945, as amended, were violated are dismissed without comment. Also in that regard, we are not persuaded by the

Carrier's alternative theory that even if, arguendo, the Extension Agreement of 15-60-95 dated July 28, 1998 governed the clear and unambiguous obligation to make TPA payments there under for Appendix "A" listed work would have been trumped by CSXT Labor Agreement No. 15-93-98.

Turning to the merits issue, in 1995, CSXT and BRS entered into CSXT Labor Agreement No. 15-60-95, which allowed the utilization of L&N signal forces on the C&EI notwithstanding Rule 10 of the Schedule Agreement, in return for New York Dock-style guarantees for the C&EI employees, based on their Test Period Average (TPA) for 12 months prior to July 1, 1995. Under Agreement No. 15-60-95, the TPA guarantee would be paid "during the period of time equal to the amount of time the L&N forces are working on the C&EI, but no less than two years following the date the former L&N forces commence work on the L&N." However, by Letter-Agreement dated July 28, 1998, CSXT Labor Agreement No. 15-60-95 was extended, as follows in pertinent part:

> "The provisions of Section 3 of CSXT Labor Agreement 15-60-95, shall be extended to include Messrs. S. F. Sievers, J. L. Denny, A. E. Sheppard and M. L. Eldridge, commencing July 23, 1998. The extension and the TPAs set forth above will end on the last day of 1998, however, if work identified on Attachment "A" is scheduled for the year 1999, the TPAs will be extended to completion of such project. This does not preclude additional extensions through mutual agreement between the General Chairman and Carrier's Director of Employee Relations."

The Parties mutually acknowledged in this record that the extension of CSXT Labor Agreement No. 15-60-95 and of the TPAs set forth in the July 28, 1999 Extension Agreement, supra, did not end on the last day of 1998, because L&N signal forces continued to perform work identified on Attachment "A" thereof during the months of January, February and March 1999, before departing on or about March 2, 1999. Nor is it disputed that through the end of March 1999, the Carrier paid the TPA protective benefits specified therein. Finally, it is not disputed that following a hiatus of some five months, the L&N System Signal Construction Gang was returned to the C&EI property sometime in August 1999 and assigned to complete work on Project 467466 and the Haley Interlocker/Conrail, a project which is listed in Appendix "A." In that connection, the following assertion by the

Organization in the October 29, 1999 appeal was never denied at any level of handling and is accepted as factual by the Board:

> "On January 1, 1999, the L&N remained on the C&EI performing work through March 2, 1999. After much discussion, the Carrier did pay all but one of the Claimants the TPA's for these three months. The Carrier then returned the L&N forces to the C&EI in August, 1999 to start work on Project 467466 and the Haley Interlocker/Conrail listed in Attachment "A" of the 1998 extension. These forces remain working on this project as of this date."

There is no probative evidence in this record to support countervailing assertions by representatives of the Parties that verbal understandings reached at the meeting in Lewisburg, West Virginia, modified the express terms of the Extension Agreement of 15-60-95 dated July 28, 1998. Whatever these representatives thought they heard the other say during that meeting, it is obvious that there was no meeting of the minds to vary or to toll the application of the written and signed terms of that July 28, 1998 Letter-Agreement. Therefore, the instant claims are sustained based on the following clear and unambiguous language of the second sentence of the first paragraph on the second page of that Extension Agreement of July 28, 1998, to wit: ". . . if work identified on Attachment "A" is scheduled for the year 1999, the TPAs will be extended to completion of such project."

Based on all of the foregoing, the Carrier must pay each Claimant the difference between the amount he was actually paid and the amount he should have been paid according to the TPA established in the July 28, 1998 Extension to CSXT Labor Agreement No. 15-60-95, for the period beginning with the month of August 1999 and continuing thereafter until completion by L&N forces of Project 467466 and the Haley Interlocker/Conrail listed on Attachment "A" of that Extension Agreement.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of August 2003.