

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36861
Docket No. SG-36553
04-3-01-3-47

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville &
(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 T. B. Rogers, N. Kirksey, C. E. Wilson and M. O. Stanfill for payment of 20 hours each at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rules 51, 31, and 32, when on December 3 and 4, 1999 Carrier allowed employees assigned to a System Signal Gang to perform work not covered under Rule 51, on Seniority District No. 6. This action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15 (00-0045). General Chairman's File No. 00-137-1. BRS File Case No. 11496-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.

In its January 18, 2000 letter the Organization alleged a violation of the Agreement when System Signal Gangs performed work that was neither in conjunction with new construction, nor a new signal installation. In fact, the Organization argued that on December 3 and 4, 1999, the System Signal Gang was instructed to wire and install a junction box at an existing crossing in violation of Rules 31, 32 and 51 of the Agreement.

The Carrier denied that the work performed violated the cited Rules. Specifically, during progression of the claim, the Carrier argued that this was not normal routine maintenance, but "involved a major revision to the existing track structure and signal system." The Carrier maintained that the disputed work fell under the auspices of System Signal Gangs, as had been performed herein.

A review of the record indicates that the dispute involves the installation of a highway crossing junction box. At issue is whether this is routine maintenance to be performed by District Signal employees, or work permitted to be performed by System Signal Gangs pursuant to Rule 51 which states that:

"(a) System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires, and slides."

The Board notes that in the on-property record in this dispute, the Carrier stated that:

"The Agreement defines construction work 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. Moreover, the replacement of existing systems may also be considered

construction work under certain circumstances. Obviously, the work at issue involved a major revision to the existing track structure and signal system.”

Given the Rule, supra, and the numerous prior Awards between these same parties, it is incumbent upon the Organization to provide sufficient probative evidence to prove that this was “maintenance” work. (See Third Division Awards 36362, 36206, 36205, 29356 and 29518, among numerous others.) The Organization simply has not done so. Assertions alone do not stand the test of evidence, especially when the Carrier specifically denied an Agreement violation. Accordingly, 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 28th day of January 2004.