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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36967
Docket No. SG-36200
04-3-00-3-398

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 Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of M. P. Nause, D. J. Guntch, C. E. Jerew, D. F. O'Brien, S. S. Forson, R. A. Grim, P. D. Neiderkahr, D. E. Hogan, D. W. Mates, D. L. Morrison, D. E. Moorman, D. E. Long, M. L. Daring, J. E. Hatfield, A. N. Edds, Jr., S. Harris, T. L. Cox, J. A. Goins, J. B. Chapman, J. A. Brabbin, J. R. Patrick, G. D. Wheaton, M. W. Snead, D. K. Chinn, J. E. Floyd, T. R. Blankenship, C. L. Warnock, C. E. Grine, J. B. Newberry, K. D. McCloud, M. D. Chaffin, L. G. Saunders, S. R. Mills II, P. M. Walker, S. F. Huffman, C. B. Douglas, D. L. Deer, R. C. Hendrian, J. P. Hale, and D. K. Patterson for payment of 173 hours each at their applicable time and one-half rates. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, and Rules 19, 24, and 25, when beginning on February 13, 1999, and continuing through March 3, 1999 it utilized forces from the B&O property to perform work on the C&O property at the Fostoria Interlocking Plant in Fostoria, Ohio. Carrier File No. 15 (99-116) General Chairman's File No. 99-17-CD. BRS File Case No. 11182-C&O.”

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 is one of two companion cases which arose after CSXT signal employees from the former B&O and C&O properties worked together on a cut-over project at the interlocking facility at Fostoria, Ohio, from February 13 to March 3, 1999. Because several railroads have used and shared ownership of that interlocking facility over the years, employees from the B&O and C&O work there together in accordance with the terms of Addendum 10, a Memorandum of Understanding dating from March 16, 1948. Paragraphs 1 and 2 of Addendum 10 provide:

- “1. This understanding is intended to cover the construction, maintenance, and renewal of all signaling and interlocking devices and apparatus within the interlocking limits of the joint interlocking layout to be installed at Fostoria, Ohio, including the home and dwarf signals protecting the crossings of the several railroads.
2. The cost of construction and maintenance of the joint interlocking layout will be divided between the four railroads approximately as follows:

Baltimore & Ohio 33 per cent
Chesapeake & Ohio 24 per cent

New York Central 22 per cent
Nickel Plate 21 per cent

and it is intended that the signal employees of the four roads share in the work of constructing and maintaining the joint interlocking layout, as far as practicable, in the same ratio that the expense to each railroad bears to the whole."

The record shows that from February 13 to March 3, 1999, 71 employees worked on the project around-the-clock in two shifts; with the former C&O employees assigned to the day shift from 7:00 A.M. to 7:00 P.M. and some 28 former B&O employees assigned from the daylight shift temporarily worked the second shift from 7:00 P.M. to 7:00 A.M. for eight days between February 17 and February 24, 1999. In Third Division Award 36968, the former C & O employees who worked the day shift assert entitlement to any overtime hours worked by the former B&O employees on the dates when the latter worked the night shift. In companion Award 36968, the former B&O employees assert entitlement to additional compensation for each day they worked the night shift. The Carrier denied the countervailing claims on grounds that the C&O and B&O employees each were properly paid at the straight time rate for their respective shifts, except when they received appropriate overtime or premium pay for working in excess of their assigned hours, on rest days, or on the February 14, 1999 holiday.

Examination of the record evidence lends support to the Carrier's position that this cut over required suspension of the signal system in an extremely vital and complex interlocking that not only affected C&O and B&O routes of CSXT, but also NS routes. Addendum 10 does not address work shifts, overtime, or overtime assignments, particularly, overtime ahead of former C&O employees. Addendum 10 does not restrict former B&O employees to work only on the daylight shift, nor does it provide that former C&O employees have the right to work overtime instead of former B&O employees working the night shift at the straight time rate. The former C&O Claimants who, like the former B&O employees, are subject to the Hours of Service Act, were working their own assignments 13 hours per day on the day shift, were not contractually entitled to the night shift overtime and could not have worked both shifts each day. Because we find no proven violation of Addendum 10, RULE 19 - ABSORBING OVERTIME, RULE 24 - CALLS,

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REPORTING AND NOT USED or RULE 25 – WORK OUTSIDE OF ASSIGNED HOURS, we shall deny this claim.

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 21st day of April 2004.

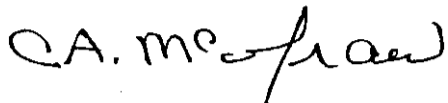
**Labor Member's Dissent to
Third Division Award 36967
Docket SG – 36022**

Referee Dana E. Eischen

As noted in the facts in the above referenced Third Division Award, the Board referenced Addendum 10, dated March 16, 1948. While the Carrier merely mentioned this Addendum in passing during the handling on the property - it was never actually presented until they filed their submission to the Third Division. The problem with the Board relying on this Addendum 10 is that it was revised by the parties on September 11, 1981.

Carrier's reliance on an outdated agreement should be considered a major distortion of the facts. Based on the foregoing Third Division Award 36967 should be considered procedurally defective and given no weight or consideration in future disputes.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "C.A. McGraw".

C.A. McGraw, Labor Member
National Railroad Adjustment Board.