

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37156  
Docket No. SG-37873  
04-3-03-3-258

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Seaboard  
( Coast Line Railroad)

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of F. Corbett, for all time (straight time and overtime, if any) that he would have earned on the assignment, had he been allowed to report to the new assignment, in addition to compensation he actually earned for the period of time he was denied the new assignment, plus any expenses; Carrier should pay 10 hours at the Signal Technician straight time rate of pay for March 25, 26, 27 and 28, 2002; April 1, 2, 3, 4, 8, 9, 10, 11 and 22, 2002, for a total of 130 straight time hours; account Carrier violated the current Signalmen's Agreement, particularly Rule 44, when it held the Claimant on his former position more than thirty (30) days after he was the successful applicant and awarded a Signal Technician position 7FG8 at Hamlet, NC, advertised on Bulletin SCSY-0047. Carrier's File No. 02-0128. General Chairman's File No. SCL-08-24-02A. BRS File Case No. 12679-SCL.”

**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.

The Claimant was assigned to the position of Signal Maintainer at Camden, South Carolina, when he was assigned the position of Signal Technician at the Hamlet Hump Yard in Hamlet, North Carolina, on March 20, 2002 pursuant to bulletin. However, he was not placed into the position until April 23, 2002, 31 days thereafter.

The record reflects that the Claimant was required to work his old assignment until the close of business on April 22, 2002, the 31st day after he was reassigned and that he offered his services to respond to trouble calls over the weekend on his old assignment. Moreover, the record reflects that he received compensation at the Signal Technician rate for that day and overtime pay at the rate of his Signal Maintainer position as well.

In our view the facts set forth above do not establish a contract violation by the Carrier. First, it is clear that the Claimant volunteered for the overtime in question because the work that required the overtime had not yet been completed. Moreover, because he was paid for the difference in pay between the two positions for the time in question, the claim is moot.

**AWARD**

Claim denied.

Form 1  
Page 3

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**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**

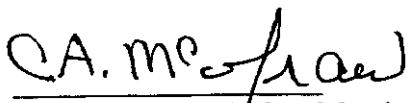
Dated at Chicago, Illinois, this 25th day of August 2004.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION  
LABOR MEMBER'S DISSENT**

Award No. 37156 – Docket No. SG - 37873  
Referee R. Perkovich

The Claimant was assigned to the position of Signal Maintainer at Camden, SC, when he bid on and was subsequently awarded, on March 20, 2002, a Signal Technician's position at the Carrier's Hump Yard in Hamlet, North Carolina. However, he was not allowed to report to the position until April 23, 2002, 31 days thereafter.

The record clearly reflects that the Claimant was required to work his former assignment until the close of business April 22, 2002. The record includes signed affidavits to support that position. The Claimant was not allowed to report to the new position until the 31<sup>st</sup> day after the close of the bulletin, thereby instantly triggering the penalty provisions of the rule. Rule 44(b) provides: "Transfer of successful applicants to new assignments shall be made within thirty days after close of bulletin advertising the position. If the successful applicants are not so transferred *within* the above specified period they shall be allowed compensation equal to what they would have earned on the new assignment in addition to compensation actually earned for the period of time denied the position, plus necessary expenses." (emphasis added) The Claimant volunteered for the overtime, however, this was only after he was held on his old position. The penalty provision requires payment "in addition to" his earnings on the former assignment and "compensation equal to what [he] would have earned on the new assignment," the claimed 120 hours at the applicable rate is payable as a consequence of the self-executing rule. The facts set forth above, and the record clearly proves, that the Organization established a prima-facia contract violation by the Carrier. The rule provides that a penalty be paid as a consequence of making the assignment outside of (instead of within) the 30 day requirement. Based on the above, the Award is erroneous and should not be considered as precedent.

  
C.A. McGraw – Labor Member