

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37242
Docket No. SG-37746
04-3-03-3-90**

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 Baltimore and Ohio
(Railroad Company)

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 B. L. Watkins, for four hours and 30 minutes at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when it called another employee instead of the Claimant for a trouble call on the Claimant’s assigned territory on February 22, 2002, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 15(02-0063). General Chairman’s File No. BME-03-04-02. BRS File Case No. 12408-B&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.

The Claimant in this case is B. L. Watkins, who, at the time this dispute arose was assigned to the position of Signal Maintainer on the Baltimore West End Seniority District. On Friday, February 22, 2002, a malfunction developed at the highway grade crossing protection system at the Millville Road crossing located at mile post 4.0 on the Shenandoah Subdivision. Thereafter, the Jacksonville Signal Control Center began to contact employees for overtime service to make the necessary repairs. The Carrier attempted to contact senior employee Watkins at his home at approximately 10:00 P.M., however, the Claimant did not answer the call, and a message was left on his answering machine. The Signal Control Center proceeded calling down the seniority list until, at approximately 10:30 P.M., junior employee R. Graves was contacted and responded to the overtime service call. Graves made the necessary repairs and was paid four and one-half hours overtime pay for his services.

On February 26, 2002, the Local Chairman submitted a claim on behalf of the Claimant in which he alleged that:

“Mr. Watkins called the Signal Control Center immediately after receiving this message and was also paged by the Control Center at this time. When Mr. Watkins reached the Signal Control Center, he was told by 3 different Signal Technicians that there was no trouble on his assigned territory, and that he was not called. Shortly after arriving for duty on Monday, February 25, 2002, Mr. Watkins learned that there was indeed a trouble call on his assigned territory and several maintainers were called and maintainer R. W. Graves accepted this call at 22:30 and was dispatched.”

The Organization requested that the Claimant be paid for the overtime that Graves worked on February 22 account “Mr. Watkins being the regular maintainer and having been available to perform the work on his assigned territory should have been afforded the opportunity to take this trouble call.”

The Carrier denied the Organization's claim noting that there was no violation of the Agreement because an attempt was made to contact the Claimant and his failure to respond to same rendered him "unavailable for service." The General Chairman responded to the denial by admitting that the Claimant had "missed" the February 22, 2002 call from the Signal Control Center, but that he had "immediately" returned the call.

The claim was subsequently discussed during a June 13, 2002 conference at which the Carrier maintained that there was "no evidence whatsoever" to suggest that the Claimant did, in fact, return the call from the Signal Control Center. The Carrier further maintained that the Claimant's story was "not credible" given the fact that the Signal Control Center continued contacting other employees for overtime service until junior employee Graves accepted the call at 10:30 P.M. Although the Organization admitted that there was no evidence to support the Claimant's story, the General Chairman remained steadfast in his assertion that although the Claimant had "missed" the Signal Control Center call, he had responded immediately after receiving same, only to be informed that there was "no trouble" on his assigned territory.

This claim asserts that although the Claimant was not at home when called for the overtime service on February 22, 2002, he "immediately" returned the call for work. For its part, the Carrier maintains that there is no evidence that the Claimant "immediately" returned the Signal Control Center's call for work, account the Carrier continued to call other employees over the next 30 minutes until it reached junior employee Graves at 10:30 P.M., and he accepted the call. At issue is this critical fact which remained unresolved on the property. It is the Organization's burden to prove, with a preponderance of record evidence, that the facts, as presented, are accurate and that a violation of the Agreement occurred. Under these circumstances, the Organization was unable to shoulder that burden.

The Board has consistently found that it is beyond its province to resolve evidentiary conflicts of material fact. This record is void of the necessary probative evidence that would support the Organization's allegations or resolve the conflict in facts. Lacking such evidence, the Board cannot resolve the conflicts, and therefore, the claim must be 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 27th day of October 2004.