

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37341
Docket No. SG-37414
05-3-02-3-455

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville and
(Nashville 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 J. L. Blackwood, for 126.56 hours time and one-half at the Lead Signal Maintainer's rate of pay plus the differential in pay between a Signal Inspector and a Lead Signal Maintainer from May 14, 2001 through June 8, 2001 and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 6, 7, 16, 17, and 46 through 50, when it failed to advertise and properly award the vacant Lead Signal Maintainer position on Seniority District No. 6 to the Claimant. Carrier's File No. 15(01-0132). General Chairman's File No. 01-137-7. BRS File Case No. 12028-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.

The Organization filed the instant claim on behalf of Signal Inspector J. L. Blackwood alleging that the Carrier violated the current Agreement when it failed to advertise and properly award the vacant Lead Signal Maintainer position on Seniority District No. 6 to the Claimant.

The Organization contends that the Carrier's failure to properly advertise or abolish vacant positions on Seniority District No. 6 represents a continuing violation in that it denied the Claimant the opportunity to overtime that was given to junior employees. The Organization asserts that the Carrier had five days to advertise the position vacated by B. R. Rogers on April 24, 2001, but failed to do so. The Organization emphasizes that although the Carrier indicated that it is aware that this is a violation of the Agreement, its policy is that no position can be advertised or abolished until that request is made by the local supervisor. This Lead Signal Maintainer position was there to work on a "special assignment," and Rogers also was to direct the work of Signal Maintainer M. O. Stanfill, who also had been assigned to this "special assignment." The Organization emphasizes that during handling on the property, the Carrier did not deny that it violated the Agreement Rules that deal with the advertisement and awarding of positions.

The Organization argues that the Carrier's failure to advertise this Lead Signal Maintainer position violated Rules 6 and 7 because this position directed Stanfill's work. Stanfill continues to perform his duties in connection with this "special assignment," and Rule 7 requires that he is to work under the supervision of a Lead Signal Maintainer. The Organization emphasizes that Stanfill also is being allowed overtime to the exclusion of the Claimant, who is senior to Stanfill.

The Organization maintains that had the Carrier properly advertised and awarded the position, the Claimant would have been the senior bidder and would have been awarded the position of Lead Signal Maintainer no later than May 14, 2001. The Claimant desired to gain the additional overtime afforded to this

position, and he would have been entitled to the same overtime from May 14, 2001, forward as that given to Stanfill. During the period from May 14 through June 8, 2001, Stanfill was afforded 126.56 hours of overtime, and the Claimant would have received at least this same amount of overtime if the Carrier had followed the Agreement's guidelines. The Organization argues that Stanfill continues to accumulate overtime even though he is not working under the direction of a Lead Signal Maintainer, in violation of Rule 7, and he is junior to the Claimant.

The Carrier initially contends that the claim presented to the Board is not the same as the one originally filed on the property. The Organization amended its Statement of Claim. The Carrier asserts that the Board long has held that it is a fatal defect to amend a claim during its progression, and the Board has dismissed claims upon that determination alone. Moreover, the original version of the instant claim is important because the Organization recognized the Carrier's option to discontinue that assignment.

Turning to the merits, the Carrier emphasizes that there is no dispute that the Claimant did not bid on a 7M24-360 Lead Signal Maintainer position that was advertised for assignment on numerous occasions during 2001, nor did he bid on any other position in 2001. The Carrier argues that the Claimant's failure to act renders moot the entire matter of compensation on his behalf. The Carrier maintains that it cannot be held responsible for the Claimant's failure to act. As for the Organization's assertion that the Carrier advertised only one of two vacant Lead Signal Maintainer positions, the Carrier points out that there is much uncertainty about the existence of two positions running in tandem from February to April 2001, and the Carrier had the managerial right not to fill the second position if it became vacant or to discontinue the position if it was not needed. The Carrier contends that it has the unfettered right to stop work on any assignment and abolish it, so the blanking of a vacant assignment does not provide the Claimant with an opportunity to make a claim for a windfall payment. The Carrier asserts that it had the choice of either advertising or abolishing the job referenced in the original claim, and this choice must still exist for the alleged second position.

The Carrier goes on to argue that there is no support for the Organization's argument that Rules 6 and 7 require Signal Maintainers, like M. O. Stanfill, to have a Lead Signal Maintainer supervising them. Similarly, there is no merit to the

Organization's assertion that the lead position was required to work in lock step with a Signal Maintainer with regard to straight time and overtime service. The Carrier points out that Signal Maintainers can and do work independently of Lead Signal Maintainers, and there is no contractual requirement that a Signal Maintainer must have a lead position working alongside.

The Carrier then asserts that the instant claim essentially is a request for injunctive relief. The Organization wrongfully requests the Board to grant injunctive relief by insisting that the Carrier should issue an advertisement bulletin for a second Lead Signal Maintainer position. The Carrier maintains that such requests are beyond the scope of the Board's authority, and similar requests previously have been denied. The Carrier contends that it advertised sufficient Lead Signal Maintainer positions to accomplish the covered work, and every employee, including the Claimant, was given an opportunity to bid on the advertised positions. The Carrier argues that it complied with the Agreement and retained its managerial right to determine the size of its workforce.

The Carrier emphasizes that there is no contractual support to uphold the Organization's assertions in this matter. The Organization failed to support its request for compensation with evidence and contractual support, and the Board should not attempt to speculate on the facts. The Carrier asserts that in view of the Organization's failure of proof, the Board should dismiss the instant claim as based on speculation and conjecture. The Carrier points out that there is no evidence that the Claimant suffered any compensation loss and is entitled to additional compensation. The Claimant is fully employed at another location, and he is seeking a windfall payment through arbitral fiat.

The Board reviewed the procedural arguments raised by the Carrier, and concludes that given the following determination, we need not rule on those issues.

The Board finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it allegedly failed to properly award the vacant Lead Signal Maintainer position on Seniority District No. 6 to the Claimant. The record reveals that the Lead Signal Maintainer position was advertised for assignment on several occasions during 2001. The record also indicates that the

Claimant did not submit a bid for the position at any time. The Claimant took no steps to obtain the position at issue during the course of the year.

The Organization failed to meet its burden of proof and it appears to be suggesting that the Carrier should issue a bulletin for a second Lead Signal Maintainer position. It is fundamental that the Carrier has the exclusive managerial right to determine the size of its workforce.

The Board also agrees with the Carrier that the Organization's claim is speculative in that it assumes that the Claimant would have been entitled to the Lead Signal Maintainer position had it been advertised. There is absolutely no factual basis to support the Organization's position that the Claimant would have been awarded the position or that he suffered any compensation loss as a result of the Carrier's action. We agree that the entire claim is based upon speculation. See First Division Awards 12661 and 16076. Moreover, the Board has consistently held that pyramiding claims will not be supported. See Third Division Awards 31569 and 27122.

For all of the above reasons, 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 19th day of January 2005.