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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37371
Docket No. SG-37426
05-3-02-3-465**

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 Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

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

Claim on behalf of W. L. Duncan, for 12 hours at the time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 1 and 25, when it allowed a Signal Supervisor to perform covered work on April 13, 2001, at Meadow Creek, West Virginia, on the New River subdivision, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 15(01-0131). General Chairman's File No. 01-52-CD. BRS File Case No. 12183-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.

The Organization filed this claim on behalf of the Claimant, alleging that the Carrier violated Rules 1 and 25 of the Agreement when it allegedly used Signal Supervisor S. K. Thompson to perform scope-covered signal work at a derailment site to the exclusion of the Claimant on April 13, 2001. The purpose of the work was wiring signal equipment due to the derailment. The Organization points out that the Claimant was available and willing to perform this work. It emphasizes that this same work was performed the previous day by an Agreement-covered employee.

The Organization asserts that the Signal Supervisor performed work functions that are reserved to covered employees. The Carrier therefore violated the Scope Rule when it used the supervisor to take the place of a covered employee. The Organization argues that the clear and unambiguous language of the Scope Rule unquestionably establishes that the wiring of signal equipment is reserved to employees covered by the Agreement. The Organization points out that the Board repeatedly has held that it is fundamental that work belonging to employees covered by an Agreement cannot be given to those not covered by that Agreement.

The Organization maintains that when an employee is deprived of the opportunity to perform work reserved to him under the Agreement, the employee is entitled to recover for this loss, in the form of compensation for the improper diversion of the work. The Carrier therefore should be required to compensate the Claimant for 12 hours at his time and one-half rate of pay for the lost opportunity to perform the work at issue.

The Carrier initially contends that there is no evidence that Signal Supervisor Thompson performed any work on April 13, 2001 that was reserved to covered employees by either the Agreement or past practice. The Carrier asserts that the Organization failed to provide any evidence to support its allegations, so the instant claim should be denied as nothing more than an unsubstantiated assertion. The

Carrier points out that the Board previously denied a similar claim on this property because the Organization failed to meet its burden of proof.

The Carrier emphasizes that the Organization has not provided any pertinent evidence or contractual support for this claim. The record is completely devoid of any specific Agreement language or contract provision supportive of the Organization's position that the work at issue should be performed exclusively by the Claimant. Moreover, the Organization's interpretation of the Scope Rule is overly inclusive and restrictive. The Carrier maintains that portions of the work in the Signal Department, including work directly involving signal equipment, are not exclusively performed by covered employees.

The Carrier ultimately contends that the Organization failed to establish a factual basis for this claim, so the instant claim should be denied in its entirety.

The Board reviewed the evidence in this case and finds that the Organization failed to meet its burden to prove that the Carrier acted in violation of the Agreement when it failed to use the Claimant to perform work on April 13, 2001. Although the Organization charges that the work performed by the supervisor was the exact work that was performed by a bargaining unit employee the previous day, our review of the record reveals insufficient evidence to support the Organization's claim that the identical work had been performed the day before by a bargaining unit employee. The record reveals that the supervisor was merely supervising employees performing work on the date in question, and that action on the part of that supervisor is not in violation of the Rules. Moreover, it definitely does not allow for the Claimant to be awarded any time for the Carrier having failed to call him in on overtime. There is simply insufficient proof in this record to support the Organization's case.

The Organization bears the burden of proof in these types of Rules cases, and it failed to meet that burden here. Therefore, the claim must be denied.

AWARD

Claim denied.

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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 24th day of February 2005.