

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37437
Docket No. SG-37918
05-3-03-3-324

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Seaboard
(Coastline 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 K. R. Lamb, for 11.5 hours pay at the foreman's overtime rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 3 & 4, when on June 7, 2002 and June 8, 2002, it had the Claimant perform the work of a foreman as a result of Carrier not calling a foreman in to perform his job on the dates claimed. Carrier's File No. 02-0144. General Chairman's File No. SCL-09-29-02A. BRS File Case No. 12521-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 in this case was regularly assigned as a Lead Signalman in the signal shop at Savannah, Georgia. On the first claim date, the Claimant worked his regular assignment plus four hours of overtime service. On the second claim date which was an assigned rest day, the Claimant worked as a Lead Signalman for ten and one-half hours for which he was paid the overtime rate for all time worked.

The claim which is addressed by this decision asks for 11 and one-half hours at the Foreman's overtime rate of pay (three and one-half hours on June 7 and eight hours on June 8) contending that because there was no Signal Foreman on duty during the periods claimed, the Claimant was a defacto Foreman and should be paid as such in addition to the payment already allowed as a Lead Signalman. Rules 3 and 4 are cited by the Organization as controlling in this case.

The aforementioned Rules 3 and 4 read as follows:

"RULE 3 - SIGNAL FOREMAN

An employee assigned to direct the work in a shop or gangs of leading signalmen, signalmen, assistant signalmen and/or helpers and who is not required to regularly perform any work over which he has supervision shall be classified a signal foreman. He may perform the necessary work to instruct those under his supervision but shall not take the place of another employee.

RULE 4 - LEADING SIGNALMAN

A signalman assigned to work with and direct the work of other employees coming within the scope of this agreement shall be classified as a leading signalman.

A leading signalman's position shall be bulletined in each shop and on each gang. When the shop or gang exceed twelve (12) men, an additional leading signalman position will be bulletined. For each

subsequent twelve (12) men or portion thereof, an additional leading signalman position will be bulletined.

A leading signalman shall have common headquarters with the foreman to whom assigned and he will relieve the foreman during the foreman's absences. The senior assigned signalman will fill the leading signalman's position under these circumstances. The above does not supersede the requirements of Rule 43."

The facts of record show that on the claim dates during the hours as cited in the claim there was Lead Signalman work to be performed. There was no Foreman called on an overtime basis on either date because in Management's judgment there was no Foreman work required to be performed. Neither was there any regularly assigned Foreman position which was not filled on the claim dates.

The record is devoid of evidence to show what Foreman's work was actually performed by the Claimant. There is no evidence in the record that the Claimant filled a vacant Foreman position or otherwise performed Foreman's duties.

This is not a case of first impression. The right of the Carrier to determine when, where and by whom work is to be performed is well established by decisions of the Board. See Third Division Awards 11075, 14041, 23551, 28057, 31297, 34222, 36165, and 36749 among others.

The language found in Award 36165, to wit:

"The language of Rule 3 - Signal Foreman of the parties' Agreement does not demand or provide for the use of a Foreman in a situation such as that involved in this case. The Organization failed to establish its position that a Foreman was required here. Therefore, the claims are denied,"

applies with equal force and effect in this case. Therefore, the claim as listed here is 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 22nd day of March, 2005.