

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37444
Docket No. SG-37169
05-3-02-3-129**

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
(Kansas City Southern Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern (KCS):

Claim on behalf of J. S. Harmon, G. McCoy, H. G. Altstatt, Jr., N. Nicholas, D. J. Riggs, M. J. Kalczynski, R. H. Ware, Jr., T. C. Johnson, J. A. Bates, R. M. Shoenbroek, J. C. Timmons, T. D. Bengt, Jr., J. E. Sellers, D. J. Hamilton, L. B. Degner, B. J. Newton, T. E. White, IV, K. W. Pool, M. A. Mitchell, T. A. Hogan, C. Charles, B. Stewart, T. P. Breau, J. L. Cathey, R. T. Parker, Jr., J. D. Nettles, M. S. May and C. S. Cooper, for 420 hours at the pro-rata rate of pay to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly the Memorandum of Agreement dated February 22, 2000, when it failed to keep its signal forces at or above the minimum number required by the agreement and then hired contract employees to install highway grade crossing warning devices from November 21, 2000 through November 30, 2000. Carrier File No. K06015439. General Chairman’s File No. 01-014-KCS-185. BRS File Case No. 11898-KRS.”

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 Claimants were at all material times herein employed by the Carrier on various signal crews. Between November 21 and 30, 2000, the Carrier used an outside contractor. Allegedly, its workforce of Signalmen fell below 62 during this period.

The Organization's challenge rests on the parties' Memorandum of Agreement. The Memorandum of Agreement provides that the Carrier "... agrees to maintain a workforce of 62 signalmen ... if, for any reason, the workforce falls below 62, all rights to use contractor forces ... are suspended until the workforce again reaches 62. ..."

We find it unnecessary to resolve this issue because the Organization failed to meet its burden of proof. The record is devoid of any evidence as to the number of days and/or hours that the Carrier's workforce fell below the number set forth in the parties' Memorandum of Agreement. Under those circumstances, we are left with no choice except to deny the claim.

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.