

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37873
Docket No. SG-37292
06-3-02-3-307

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of L. A. Jackson, for four hours at the Signal Maintainer's rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 12 (b), when on January 22, 2001, it had a Relief Signal Maintainer respond to a signal failure on the Claimant's assigned territory, without giving the Claimant an opportunity to respond to the call. Carrier continues to violate the agreement by having the Relief Signal Maintainer's position handle trouble on the Claimant's assigned territory. Carrier's File No. 35 01 0026. General Chairman's File No. 01-053-BNSF-121-T. BRS File Case No. 11929-BNSF.”

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 claim at bar is that on January 22, 2001, the Claimant was not able to respond to a signal failure on his territory and "work outside of assigned hours," due to the fact that Signal Maintainer Humphries carried out the work. The Organization argues that this violated Rule 12(b) of the ATSF Agreement. Rule 12 is the call procedure and Section "b" states:

"When necessary work is to be performed outside of assigned hours on an assigned territory, employe(s) will be called in the following order, if they are available and can be located promptly:

- (1) The assigned maintainer
- (2) Any adjoining maintainer(s) on the same seniority district."

Because another Signal Maintainer worked the assigned territory and not the Claimant, the Organization alleges a violation of the call procedure.

The Carrier denied the claim. It argued that Relief Signal Maintainer Humphries, who made the repairs to the switch, was the second shift employee working the same district as the Claimant. The repairs he made were those that he was responsible for making. No violation occurred.

The Board studied the full on-property record. The Organization is correct that it is not necessary to call the employee a Relief Signal Maintainer, as this is redundant, not in the Agreement, but rather is his assignment. Nevertheless, the Organization must come forward with proof of a violation. The Board finds no proof that the Carrier lacked the right to use Signal Maintainer Humphries to repair the switch. It was Signal Maintainer Humphries' assigned shift, his assigned territory, and his responsibility to repair the equipment. There is no showing by the Organization as to why the Claimant had a right to be called out for this one job during Signal Maintainer Humphries' second shift.

Having reviewed the right of the Carrier to stagger the work in Third Division Award 37871, we find no support or proof by the Organization for the instant claim for overtime. As stated in Third Division Award 37318, "The Board has held on numerous occasions that the Agreement does not require the Carrier to use employees on an overtime or premium basis when the work involved can properly be performed on a straight time basis." We find no support for a Rule violation in the use of Signal Maintainer Humphries on his regular assigned shift and territory, rather than calling out the Claimant. As such, 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 1st day of August 2006.