Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39312
Docket No. SG-38434
08-3-NRAB-00003-040378
(04-3-378)

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
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Seaboard Coast Line):

Claim on behalf of D. E. Killette, for 32 hours at the Signal Maintainer's straight time rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Appendix 1, Article 10(b) of the National Vacation Agreement, when it distributed more than 25 percent of the workload of a vacationing employee to the Claimant without providing a relief worker on various dates between June 2, 2003 and June 6, 2003. The vacationing employee's territory was Wilson, NC. The work consisted of working with the surfacing team. Carrier also violated Rule 50, when it provided a defective denial of the claim due to lack of precision. Carrier's File No. 15(03-0089), General Chairman's File No. SCL-09-19-03A. BRS File Case No. 12972-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 Organization initially contends that the Carrier violated the parties' Agreement when it distributed more than 25 percent of a vacationing employee's workload to the Claimant without providing a relief employee. It asserts that the record shows that during the other employee's vacation week, the Carrier required the Claimant to work on the vacationing employee's territory four out of the five days that the employee was absent. The Organization emphasizes that this is more than 80 percent of the vacationing employee's workload for that week of vacation, and no relief employee was hired as required by Appendix 1, Article10(b).

It contends that the Claimant was required to work his regular assignment in addition to working on the vacationing employee's territory. Moreover, there is no evidence that anyone was assigned to cover the workload on the Claimant's territory.

The Organization contends that the fact that the Claimant was away from his normal assignment for 32 hours (80 percent of his available time during a 40 hour workweek) is clear proof of the Claimant's burden. The Carrier's assignment of additional tasks on a vacationing employee's territory clearly limited the Claimant's time to perform assigned duties on his territory.

The Organization insists that there is no dispute that the Claimant performed more than 25 percent of the vacationing employee's workload, and that there was no agreement between the parties for a larger distribution of the vacationing employee's workload.

The Organization asserts that Article 10(b) limits the Carrier to distributing no more than 25 percent of the vacationing employee's workload, but in this case, the Carrier has not disputed that the Claimant worked more than 25 percent of the vacationing Maintainer's workload. The Organization argues that these facts, and the findings in numerous Awards, clearly show that the Carrier violated Section 10(b). The Board repeatedly has found that the Carrier may distribute more than 25 percent of a vacationing employee's workload only if the Carrier first reaches

agreement with the Organization. According to the Organization, the Carrier did not seek any such agreement here.

The Organization maintains that under the circumstances, the Carrier was prohibited from assigning more than 25 percent of the vacationing employee's workload to other employees. In the instant case, the Carrier clearly exceeded that limit without hiring a relief employee or agreeing to distribute a larger amount of the workload.

The Carrier asserts that the Organization's appeal and subsequent letters failed to satisfy the Organization's burden to provide sufficient evidence to support this claim.

It insists that the existing workforce was sufficient to perform the needed signal work, and there is no evidence to suggest that the Claimant was burdened by the assignment. The Carrier argues that the Organization has not presented evidence necessary to establish facts that would warrant additional payments to the Claimant.

It contends that no additional burden was placed on the Claimant because he simply performed work that he was qualified to perform. Moreover, there is no evidence that the Claimant required help or needed to work overtime to perform his normal work assignment.

Lastly, the Carrier argues that the Organization's assertion that its initial denial was defective and must fail due to "lack of precision," is without merit. The Carrier points out that Rule 50(a) merely requires the Carrier to respond to the claim within 60 days of its filing. The Carrier's response was well within this time frame. The Carrier asserts that the Rule does not place any restriction upon which Carrier officer denies the claim. It emphasizes that the Organization has not demonstrated a "lack of precision" in the Carrier's denial, so the Organization's contention of a procedural irregularity should be disregarded.

The Board reviewed the record and finds that although the Organization filed a claim stating that the Carrier violated Article 10(b) of the National Vacation Agreement when it distributed more than 25 percent of the workload of a vacationing employee to the Claimant without providing a relief worker on various

dates between June 2 and June 6, 2003, the Carrier did not properly deny that claim. The record reveals that although the Carrier initially generally denied the claim, stating that the Carrier "did not instruct Killette in these cases to perform regular assigned maintenance work on Signal Maintainer C. M. Cavanaugh's position," that August 20, 2003 denial by the Division Engineer did not set forth the dates on which the work allegedly took place. Subsequently, when Senior Director of Labor Relations J. H. Wilson denied the appeal on October 28, 2003, he specifically referred to the dates of April 21 through April 24, 2003 as the time that the Claimant had been required to perform service on the adjoining Maintainers' territory. The entire response by the Senior Director of Labor Relations deals with those dates, which were not a part of this claim.

There is nothing in the file that shows that the Carrier denied the claim filed by the Claimant, which related to the dates of June 2 through June 4, 2003.

Nevertheless, there is no explanation why the Organization believes that the Claimant should be paid twice for his work on June 4, 2003. Consequently, the Board finds that the Organization met its burden of proof with respect to 24 hours' work by the Claimant, because the Carrier did not file a proper denial to the *Organization's claim. Therefore, the Board shall partially sustain the claim in the* amount of 24 hours.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of September 2008.