

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43802  
Docket No. SG-44669  
19-3-NRAB-00003-180066**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):**

**Claim on behalf of J.G. Janik, for 30 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 3, 7, and 17, when, from July 13-15, 2016, it assigned a Foreman to dig in junction boxes, attach bonds to the rail, and perform other work generally recognized as signal work; thereby taking the place of another employee and denying the Claimant the opportunity to perform this work. Carrier’s File No. 2016-21076. General Chairman’s File No. 16-178-01. BRS File Case No. 15803-L&N.”**

**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.

This dispute arose on July 13-15, 2016, when the Foreman for System Signal Construction Gang #7XH1, C.W. Thompson, allegedly performed bargaining unit, by installing junction boxes, attaching bonds to the rail, and other work generally recognized as bargaining unit work, at the north and south ends of McDaniels, on the W&A Subdivision. The Claimant was assigned as a Signaller on Gang #7XH1. The Organization filed this claim on September 2, 2016, alleging a violation of Rule 3. Rule 3, Foreman, states:

“An employee who is assigned to direct the work performed by leading signalmen, signalmen, assistant signalmen and/or helpers. A foreman may make inspection or test of the job under way but shall not take the place of another employee.”

The parties having been unable to resolve the dispute through the normal claims procedure, the matter was appealed to the Board for final and binding adjudication.

The Organization argues that the Carrier violated Rule 3 when it utilized a Foreman to perform work that accrued to the Claimant under the current Agreement. Under Rule 3, Foremen are contractually restricted from performing such work; their duties are limited to direct the work of the Gang, including inspection and tests. The Carrier's position that it did not instruct Foreman Thompson to perform the disputed work and should not be held responsible is not persuasive. As a Foreman, Thompson is an agent of the Carrier, which should be held responsible for his actions. The Claimant lost a work opportunity and should be reimbursed.

The Carrier argues that the Organization failed to show that the claimed work took place. It is the Organization's obligation to provide evidence that the work occurred as alleged, and it has not done so. Even if the work occurred as alleged, the Carrier did not direct, assign, or require Foreman Thompson to perform the claimed work and it would be unreasonable to hold the Carrier responsible for his actions. There were other signalmen present who could have done the work, and the Organization has failed to establish that the Claimant was entitled to it.

The only substantive piece of evidence in the record is an e-mail dated October 20, 2016, from Manager Alton Todd to the Carrier's Labor Relations representative, in response to a query about what happened:

**“Carrier had no knowledge nor did the Carrier instruct Signal Foreman Wayne Thompson to perform those duties as described in the claim. Other signalmen were available to perform the duties as described in the claim. Mr. Thompson took it upon himself to perform the duties of the signalmen as described in the claim.”**

**Rule 3 is clear in delineating the appropriate limits on Foremen performing the work of those under their supervision. However, the record includes no evidence that Foreman Thompson actually performed the duties alleged by the Organization, such as statements from individuals who witnessed him performing the work. The Carrier credibly denied that it had instructed or required him to do the work, if it occurred as alleged. Finally, the Board agrees with the Carrier that, under the circumstances, it would be inappropriate to hold the Carrier responsible for the actions of a Foreman who “went rogue,” as the saying goes, without its knowledge or permission.**

**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 16th day of July 2019.**