

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29703
Docket No. SG-29766
93-3-91-3-109

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSXT, Inc. (Former L&N):

Claim on behalf of J. W. Frazee et al, for payment of additional pay at their punitive rates of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it allowed or permitted individuals who were not covered under the Agreement between the parties to perform overtime service from February 17 through February 20, 1990, on the former Chicago, Eastern and Illinois Railroad (sic) property." Carrier file 15 (90-41). BARS Case No. 8240-CSXT.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 employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

On February 15, 1990, Carrier's C&EI, Danville, Illinois, line was affected by an ice storm. Between February 17 and 20, 1990, Carrier utilized Signal Maintainers from other component Carriers of CSXT to perform repair work on this line. While the former C&EI Railroad is now a part of CSXT, having been merged in 1969 into the L&N Railroad, which was later merged into CSXT, the Organization and Carrier continued to maintain separate working Agreements covering these lines of roads. The Organization contends that

using Signalmen from other CSXT lines to do repair work on the former C&EI is a violation of its C&EI Agreement. Carrier answers that an emergency existed and it was permissible under these circumstances to utilize forces from other areas to afford immediate relief from the emergency.

When Carrier raises an "emergency" defense as license to deviate from the basic requirement that forces subject to the scope of an Agreement are entitled to perform work subject to the Agreement, it is obligated to come forward with sufficient evidence establishing that an emergency did, in fact, exist. (Second Division Award 6821.) It is also necessary, in these circumstances, to demonstrate that the emergency required extraordinary action to preserve property and avoid endangering life or limb. It is not sufficient to merely demonstrate that the circumstances present made it more convenient or expedient to deviate from the requirement that employees assigned under the Agreement are entitled to do the work subject to the Agreement.

The facts in this case indicate that Carrier utilized strangers to the C&EI Agreement more for expedience and convenience, rather than because an emergency was present and the action taken was to preserve property and protect life and limb. The extra forces were brought in after the storm abated. By then conditions were returning to normal. Trains were running over the line, some at nearly 80% of the maximum operating speed allowed.

Carrier repeatedly expressed surprise that the Organization did not accept its argument that an emergency existed. Yet it offered no hard evidence that one was present when the extra forces were brought in. Moreover, the extra crews were only on the property for a brief period, three days. The fact that extra forces completed the repairs in a shorter period than C&EI forces could have completed the task without assistance does not, per se, demonstrate that an emergency was present. More is required and it is Carrier's responsibility to satisfy this requirement. This has not been done in this record. Carrier has argued, but not proven that emergency conditions required the action taken.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.