

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29856
Docket No. SG-30035
93-3-91-3-437

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (L&N);

Claim on behalf of H. W. Martin, et al, for payment of certain compensation, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule and Rules 31, 32, 37 and 51, when it allowed or permitted signal supervisors and a System Signal Crew to repair and up-grade the existing Signal Maintenance territory at Memphis, Tennessee." Carrier's File No. 15 (90-67). BRS File Case No. 8379-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.

The question presented in this case is whether Carrier violated Rules 31, 32 and 51, when it assigned employees from the System Signal Gang and signal employees from an adjoining seniority district to perform signal maintenance work on the Claimant's territory in Seniority District #4. The territory in question is a 107 mile long stretch of track between McKenzie and Memphis, Tennessee, which is on Seniority District No. 4. Carrier asserts the affirmative defense of "emergency" under Rule 51 (a):

Rule 51(a)

"(a) System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires and slides."

On June 19, 1990, an accident involving a train and a gasoline truck occurred at Brownsville Crossing near Memphis, Tennessee. The accident and fire were investigated by numerous agencies, including the National Transportation Safety Board, the FRA and the Tennessee Public Service Commission. In the course of the accident investigation, the FRA inspectors discovered several instances where signal work was "defective or not properly installed," and directed Carrier to effect necessary corrections.

On June 25, 1990, Carrier notified the Organization that "due to the substandard conditions of the territory" additional employees are being dispatched to assist regularly assigned employees to make the necessary repairs. The Carrier sent Louisville Seniority District (No. 4) "Division Gang", headquartered at Louisville, Kentucky (Claimants Martin, Morrison, Winstead and McGaha), to assist the two Maintainers assigned to the Memphis to McKenzie territory (Claimants Lindsey and Hampton). System Gang 7X44 (Foreman and three Signalmen) and a Signal Maintainer from Seniority District No. 9 (R. D. Price) were also sent to assist in making the necessary repairs.

The Organization protested the use of employees who were not assigned to Seniority District No. 4, and filed a claim with the Division Engineer.

The Carrier took the position that this situation was an "emergency" and that the "rehabilitation of the territory required them to use employees outside the seniority district." Carrier further argued that "this action was taken as an alternative to hiring outside contractors." Finally, Carrier submitted that "the Claimants were fully employed at the time the work in dispute was performed."

The Organization asserted that an "emergency did not exist" and that the Carrier "created the problem because they previously dismissed the employee assigned this territory and had failed to re-bulletin or fill the vacant position" thereby inviting the substandard conditions on the territory.

The evidence of record shows clearly the collision of the train with a gasoline truck constituted an "emergency;" but the after-

discovered signal deterioration and substandard signal work was not causally related to that collision and does not meet the Agreement definition of "emergency." Nothing in this record suggests that the "substandard" signal conditions of the territory were sudden overnight phenomenon or anything other than progressive and cumulative. Nor is there any showing that the corrective signal repair and upgrade work on Claimant's assigned territory could not have been undertaken and accomplished with normal manning without the extraordinary and extracontractual measures taken by Carrier. Therefore, we find that the Organization has proven the Agreement violations claimed.

The only question remaining is what remedy is appropriate under the facts and circumstances presented. This Board has often held that the Agreement may not be disregarded with impunity. See Second Division Awards 11660, and Third Division Awards 27983 and 27614. On the other hand, it is part of the Organization's burden of proof to establish compensable damages. Nothing on this record effectively refutes the following information adduced by Carrier in handling on the property:

"Payroll records show that the six Claimants were paid as indicated below for June 23-25, 1990 (which includes travel time to off-duty point):

	Saturday June 23	Sunday June 24	Monday June 25
B. J. Lindsey Ld. Sig. Mtr.	10 hrs 30 mins OT	4 hrs OT	8 hrs ST 2 hrs 30 mins OT
E. Hampton Signal Maintainer	10 hrs 30 mins OT	12 hrs OT	8 hrs ST 4 hrs 30 mins OT
H. W. Martin Foreman	Monthly salary	13 hrs OT	Monthly salary
J.S. Morrison Signalman	13 hrs OT	13 hrs OT	10 hrs ST 2 hrs 30 mins OT
H.E. Winstead Signalman	13 hrs OT	13 hrs OT	10 hrs ST 2 hrs 30 mins OT
E. M. McGaha Signalman	13 hrs OT	13 hrs OT	10 hrs ST 2 hrs 30 mins OT"

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As a deterrent to future violations, Carrier shall pay each of the Claimants a minimum call for each day covered by the claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.