

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29939
Docket No. SG-30722
93-3-92-3-520

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chicago and
(Eastern Illinois Railroad)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (former C&EI):

Claim on behalf of Mr. T.L. Bolenbaugh, ID #188468, Mr. J.W. Phillips, ID #188465, Mr. J.R. Shappard, ID #188444, Mr. L. R. Cundiff, ID #188471, Mr. J.T. Hollen, ID #188469, Mr. J.E. Batton, ID #188479, Mr. R.A. Blacketer, ID #187255, Mr. E.A. Jarvis, ID #187419, Mr. T.J. Blakely, ID #188154, MR. E.L. Garrity, ID #188658, Mr. V.P. Thomas Jr., ID #188267, Mr. M.R. Heck, ID #320398, and Mr. D.J. Norman, ID #320429 that:

- (a) The Carrier violated this Agreement by allowing and/or instructing employees, other than those that fall under this Scope Rule to perform bona/fide work that does fall under the Scope.
- (b) The Carrier used employees from another CSX property, (Clinchfield Railroad), under a separate Agreement, and another Scope Rule to perform signal work on the property of the Chicago and Eastern Illinois Scope Rule and Agreement.
- (c) Employees that are listed above that do fall under this particular Agreement were denied their rights to the work under the C&EI Agreement in preference to other employees from CSX who hold no seniority rights under the C&EI Agreement.
- (d) The Carrier is also in violation of additional rules that fall under the C&EI Agreement. Rule #10, #37, and #41 are also violated.

- (e) The Carrier's use of these forces from outside the working Agreement of the C&EI created a Loss of Work Opportunity for the employees listed within this claim."

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 March 13, 1991, an ice storm caused severe damage to signal and communications lines over a 14 mile stretch between Woodland Junction and South Wellington, Illinois. Signal employees in this territory are employed under an Agreement between the Brotherhood of Railroad Signalmen (BRS) and the former Chicago and Eastern Illinois Railroad Company (C&EI), which is now part of CSX Transportation. The Carrier determined there was an inadequate number of C&EI Signalmen to repair the damage. Consequently, it called 11 Signalmen from the former Clinchfield Railroad portion of its property to perform service in this territory.

The Organization does not dispute the existence of an emergency on March 13, 1991, nor does it challenge the Carrier's right to use the former Clinchfield Signalmen in emergency service on the former C&EI line. The Organization insists, however, that the emergency ceased to exist after March 14, 1991. Thereafter, according to the Organization, these employees were used to install a new Centralized Traffic Control (CTC) signal system known as "Electricode." The Organization asserts this work should have been performed by the Claimants, who are Signalmen under the former C&EI Agreement.

The Carrier first denies there is evidence of a violation of the Scope Rule. It admits, however, that former Clinchfield Signalmen were sent to assist employees on the former C&EI to restore the signal system and functions necessary to keep the railroad running. It further notes the Claimants were engaged in the necessary work of their craft and were not harmed by the Carrier's actions.

The issue of whether the Carrier may use employees who are not covered by the relevant Agreement in emergency situations is not before the Board. As noted above, the Organization has not challenged the right of the Carrier to do so. Rather, the question is whether or not the emergency situation ended at some time prior to the return of the former Clinchfield employees to their proper working district.

This Board has recognized emergencies as a defense in some cases, but when asserted by the Carrier in response to a claim of a Scope Rule violation, it must be considered an affirmative defense. As such, the burden of proof shifts to the Carrier to show the existence of an emergency. In this case, the Organization argues the emergency ended when the Carrier was able to operate trains in a reasonable fashion. It is evident the Carrier elected to upgrade the CTC system rather than repair it. The Carrier has failed to show why emergency conditions continued to exist while the CTC system was being upgraded. Lacking such evidence, we must agree with the Organization that the emergency ended after March 14, 1991, and the Carrier was then no longer privileged to perform the work in question with the former Clinchfield Signalmen. The Agreement, therefore, was violated.

The Board does not agree with the Carrier's contention that the Organization's claim for relief is vague or unreasonable. The Claimants should be compensated for the time worked by the former Clinchfield Signalmen. The fact that the Claimants were working at the time should have no bearing on this remedy. See, for instance, Third Division Awards 20311 and 21678, as well as those cited therein. The claim is sustained, but at the straight time rate of pay in accordance with previous Awards of the Board.

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 2nd day of December 1993.