

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32798  
Docket No. SG-33508  
98-3-96-3-1052**

**The Third Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.**

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

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:**

**Claim on behalf of F.R. Rogers and J.L. Blackwood Jr. for payment of 84 hours each at their respective time and one-half rates, and on behalf of T.B. Rogers, S.A. Cox, W.E. Gunter, L.P. Grace, A.G. Smith, C.C. Pierce Jr., W.E. Hinton Jr., R.P. Enfinger, R.L. Stansberry, K.L. Brown, L.D. Patterson Jr., G.L. Broadway, R.F. Bullock, T.J. Asher, J.L. Brown, C.E. Stewart, C.J. Kays, A.L. Brown, B.R. Rogers and E.J. Ward for payment of a total of 720 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized employees from another railroad to perform repair work on the signal system from October 7 to October 13, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15 (96-17). General Chairman's File No. 95-137-30. BRS File Case No. 9989-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.

The claim asserts that the former L&N Agreement was violated and Claimants damaged when Carrier brought Signal employees covered by the former SCL Agreement onto former L&N property in the Pensacola, Florida, area to perform signal restoration work from October 7 through October 13, 1995.

The claim was denied on the grounds that Carrier was faced with an emergency situation brought on by Hurricane Opal's damage to part of its signal system causing that part of the system to be placed under operation of DTC Blocks. Further, that the work performed during the period of the claim was necessary to quickly restore the signal system to a reliable state in order to protect trains and the public at highway crossings.

From the record it is an undisputed fact that Hurricane Opal hit the Pensacola area October 4-5, 1995 causing extensive damage. Carrier, in the exercise of its managerial judgment, determined it should restore its signal system to a reliable state as quickly as possible. To do so it needed additional qualified employees. Employees covered by the former SCL Agreement were available and Carrier elected to use them.

The Board has held in numerous Awards that in an emergency situation, a Carrier is given greater latitude in clearing an emergency. See Third Division Award 17795. Accordingly, we conclude that the determining factor here is whether an emergency existed.

The Organization argues there was no emergency and grounds its argument on the position that trains ran at normal or near normal speeds the entire time that former SCL employees were used. It also advances the position that some of the Claimants were sent home while the former SCL employees continued to work. Carrier denied that its trains operated at normal speed, stating they were required to make frequent stops for

**malfunctioning signals. Carrier denies that any employees were sent home, and suggests that the payroll for October 1995 refutes the Organization's contention.**

**The Organization, as the moving party, has the burden of proving its assertions. It failed to produce any evidence to support its assertion that trains were operating at normal or near normal speeds, and it failed to identify employees who were allegedly sent home while former SCL employees continued to work.**

**The Board is of the opinion that Carrier's operation of trains subsequent to Hurricane Opal hitting the Pensacola, Florida, area is not sufficient evidence that an emergency did not exist.**

**Based on the record before the Board, we conclude that Carrier proved its position that an emergency situation existed following Hurricane Opal's damage to its signal system, which justified its use of Signal Department employees covered by the former SCL Agreement to assist in the expedited restoration of its signal system.**

**In deciding a somewhat similar case, the Third Division in its Award 29049 held:**

**"... Under such circumstances Carrier has broader authority in assigning employees than under normative conditions. We find no evidence that Carrier abused its discretion when it exercised emergency powers and no evidence overcoming Carrier's affirmative defense. To be sure, the Organization initially established a rule violation, but this position could be overcome or defeated where a factual showing establishes an emergency."**

**We subscribe to its findings. The claim is denied.**

**AWARD**

**Claim denied.**

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**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 23rd day of September 1998.**