

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30456
Docket No. SG-30801
94-3-92-3-615

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

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

STATEMENT OF CLAIM:

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

- (a) Claim on behalf of S.P. Skinner et al, account of Carrier's violation of the Signalmen's Agreement, particularly Rule 51, when it assigned CSX System Construction Gang #7X46 to make non-emergency repairs to pole line on April 28 and 29, 1991.
- (b) Carrier should now be required to make Claimants whole for the loss of work opportunity by compensating them for all time that System Gang #7X46 forces were so engaged, a total of \$1308.36, to be divided equally among the Claimants." Carrier File 15(1-53). GC File 91-178-02. BRS Case No. 8691-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 waived right of appearance at hearing thereon.

The Organization claims that Carrier violated the Agreement rights of the Division Signal Maintainers when it utilized System Signal Gang 7X46 to assist in repairs necessitated when a tornado downed a two-mile section of signal pole line near Noyta, Alabama, on the night of Saturday, April 27, 1991. Essentially, this case involves the application of the plain language of the following "emergency" proviso of Rule 51 to a set of facts which are not basically disputed:

"(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." (Emphasis added)

The Division forces were called originally to respond to the immediate emergency on April 27, 1991, and they successfully restored service some time on the morning of April 28, 1991. It is not disputed that even after service was restored, however, that control wires remained on the ground and laying across communication lines. Commencing on the morning of Sunday, April 28, 1991, Carrier assigned System Construction Gang No. 7X46 to assist the Division forces in completing the repairs. The combined Division and System Gang forces jointly completed restoration of the pole line in question on Monday, April 29, 1991.

Under the controlling language of Rule 51, the burden of proof is plainly upon Carrier to demonstrate that the "emergency" conditions were still applicable at the time when the System Gang was utilized to assist in completion of the repair project. Our careful study of the record facts persuades us that Carrier failed to meet that burden of proof. In that connection, Third Division Award 20628 is instructive:

"Emergency does indicate a sudden happening and the need for precipitous action passes in a short time frame. Then after the emergency passes a longer period of corrective action may be needed. In the usual understanding that period is not best described as an emergency."

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.