

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30928
Docket No. SG-31382
95-3-93-3-344

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company(C&O):

Claim on behalf of J.M. Beckelheimer, K.E. Fraley and W.F. Lanham for payment of 26 hours each at their time and one-half rates, account Carrier violated the current Signalmen's Agreement, particularly Rule 43(a), when it utilized a System Signal Gang on June 30, 1991, to perform work reserved to Division Signal Forces and deprived the Claimants of the opportunity to perform the work."

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.

Carrier used its System Signal Gang to perform FRA defect correction work as alleged in the claim. Although the date the work was performed was the subject of some debate, the Carrier's responses did not explicitly deny that it was performed on June 30, 1991. Moreover, the Carrier's Submission says the work was done on that date. June 30, 1991 was a Sunday, which was a rest day for the Claimants.

Rule 43(a) reads as follows:

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

Carrier asserts that emergency circumstances justified its actions, and it notes that Claimants were fully employed, as well as working overtime, on other projects.

Carrier's contributions to the on-property record do not explain how long it had to remedy the FRA defects. Its responses say only that the time limits had expired. This expiration, however, is the basis of its claimed emergency circumstances. In its Submission, Carrier also said, "... the project to correct the installation of the line wire was not scheduled in a timely manner and the FRA correction time limits had expired."

Carrier's assertion of emergency is, under the circumstances of this record, an affirmative defense. It is well established that the burden of proof to establish the validity of an affirmative defense is upon the party asserting it. On this record, Carrier failed to satisfy that burden. Accordingly, we find Carrier's actions violated the effective Agreement.

The record establishes that the work was reserved to the Claimants and was performed on their rest day when they were available. It was a regular day for the System Gang, thereby allowing Carrier to pay for the work at straight-time rates. Thus, we find Claimants were denied overtime opportunities. Since Carrier did not dispute the number of hours worked by the System Gang, we find the appropriate remedy to be payment of the claim as stated.

AWARD

Claim sustained.

O R D E R

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 8th day of June 1995.