Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39022
Docket No. SG-38590
08-3-NRAB-00003-040595
(04-3-595)

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company:

Claim on behalf of S. Hamblen, for 10 hours straight-time pay for each date that there are less than six men assigned to the district team on the former C&EI, beginning July 22, 2003 through August 20, 2003, and continuing until Carrier is in compliance with the Agreement. This should also include any overtime accrued by the other five men assigned to this team during the period of this violation, account Carrier violated the current Signalman's Agreement, particularly CSXT Labor Agreement (Flexibility Agreement) dated 10-30-98, and Side Letter #2, when it used a 'boring' team on the former C&EI property without maintaining full employment. Carrier's File No. 03-0126. General Chairman's File No. 3-25-6. BRS File Case No. 12977-C&EI."

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 Organization filed the instant claim on behalf of Claimant S. Hamblen, asserting that the Carrier violated the Agreement when it used a boring gang from former L&N property to perform work on former C&EI property without maintaining full employment on the C&EI.

The Organization initially addresses the Carrier's argument that the claim was sent to the wrong Carrier officer for handling. It contends that the claim was properly filed, in accordance with the manner of filing over the past 17 years. It points out that although the Carrier had plenty of opportunity to do so, it never challenged or otherwise objected to this statement. In accordance with a long line of Third Division Awards where, as here, any material statement goes unrebutted, such statement must be accepted as fact.

As for the Carrier's assertion that the Organization cited the wrong Flexibility Agreement Side Letter in the claim, the Organization acknowledges that it did inadvertently refer to Side Letter No. 2 instead of Side Letter No. 1. It maintains, however, that the claim left no doubt as to which Side Letter the Carrier violated. The Organization further argues that after the Flexibility Agreement was negotiated, the Carrier provided the Organization with a copy of the Agreement that had no numbers for the Side Letters.

The Organization then insists that the Carrier is wrong in asserting that Side Letter No. 1 does not require it to maintain six-man teams under the circumstances at issue. The Organization contends that the only reason that the Carrier put a sixth man on Gang 7N12 is that Side Letter No. 1 required it, and the Carrier agreed.

The Organization points out that Side Letter No. 1 prohibits the Carrier from using a foreign gang on C&EI property unless employment levels are maintained, which did not happen in the instant case. Citing the Carrier's argument that boring gangs are not covered under the Flexibility Agreement, the Organization maintains that even if the Board agrees that boring gangs are exempt from some of the Flexibility Agreement's provisions, Side Letter No. 1 is an exception and the Carrier failed to comply with its full employment provisions. The Organization emphasizes that the

Carrier was well aware that it was going to bring a boring gang onto the C&EI and that, pursuant to Side Letter No. 1, it had 120 days to provide for a sixth employee.

The Organization argues that the provisions of Side Letter No. 1 could not be clearer. The Carrier was obligated by the Agreement to maintain the employment level that was established before it could even consider using a foreign gang on the C&EI. The Organization emphasizes that in its correspondence, the Carrier admitted that it had failed to comply with the provisions of the Agreement beginning on July 21, 2003.

The Organization asserts that the Carrier violated the Agreement when it utilized an L&N boring gang on the former C&EI property without maintaining full employment during the time period at issue.

The Carrier initially contends that the claim is not a continuing claim. It points out that the initial claim, as well as the claim before the Board, clearly defined temporal parameters. The Organization has stated that the violation took place between July 22 and August 20, 2003. The Carrier urges the Board to disregard the Organization's contention that this matter represents a continuing claim. Citing several prior Awards, the Carrier asserts that a claim based on a single event is not a continuing claim, regardless of the consequences of that single event. The Carrier emphasizes that the Organization failed to show that the instant claim is continuing in nature.

The Carrier argues that the parties' Agreement to create specialized ("boring") signal teams was the culmination of a long-standing dispute between the parties on this and other properties. The Carrier points out that in the past, the Organization was unsuccessful in its attempts to convince tribunals of its demand right to perform "boring" work on CSXT or other carrier properties. The Carrier asserts that although the instant claim lacks coherence, it believes that this claim involves the Organization's contention that the Carrier is prohibited from using a specialized signal or "boring" team on a territory where there are furloughed employees or where the Carrier failed to comply with an inexplicable staffing requirement. The Carrier points out that the Claimant was not furloughed during the claim period, that the Organization failed to cite any Agreement provision that requires the Carrier to maintain a six-man signal team, and that the Organization failed to provide any proof whatsoever to support its assertions in this case.

The Carrier asserts that the portions of the Agreement cited by the Organization pertain to Signal Construction Teams, not specialized signal teams such as "boring" teams. The Carrier acknowledges that the Agreement does restrict the Carrier's right to send a System Construction team onto a property where there are furloughed employees, but this applies only to Signal Construction Teams, and "boring" teams are exempt from this provision.

The Carrier goes on to contend that the Organization has not provided any evidence that would support its argument that the Carrier must maintain six employees on any signal gang. The Carrier points out that the Organization repeatedly made unsupported statements in the record that the Carrier violated Side Letter No. 2, and the Carrier emphasizes that Section 4 of CSXT Labor Agreement No. 15-093-98 clearly proves the Carrier's unfettered right to use boring teams on the C&EI property. The Agreement language is clear that specialized teams, such as "boring" teams, were exempted from the full employment clause in Section 2 of that Agreement. The Carrier insists that it did not violate the Agreement.

The Carrier points out that the Organization bears the burden of proving all aspects of its claim, but it failed to do so. The Carrier therefore argues that the instant claim must be denied. The Carrier asserts, in addition, that the Claimant was not furloughed during the claim period, so he is not entitled to any punitive compensation in any event.

The Board reviewed the procedural arguments raised by the Carrier and finds them to be without merit. The Board holds that the Organization properly filed its claim in this case.

The Board also finds that the Organization failed to meet its burden of proof that the Carrier violated the Flexibility Agreement when it used a "boring" team on the former C&EI property without maintaining full employment. The record is clear that the boring team is a specialized signal team and is not subject to the full employment clause of CSXT Labor Agreement No. 15-093-98. It is clear that the Carrier is restricted from sending signal construction teams onto a property when there are furloughed employees, but that only applies to signal construction teams. Boring teams are exempt from that provision. See Part B of the section which states the following:

> "Boring gangs will be subject to the provisions of Section 2, A. above, but exempt from Section 2, B. above."

Several Awards have supported the Carrier's position in this case, including Third Division Awards 34169 and 24538.

It is fundamental that the burden of proof rests on the Organization. It failed to sustain its burden of proof in this case. Therefore, the claim must be denied.

AWARD

Claim denied.

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 22nd day of April 2008.