Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39023
Docket No. SG-38604
08-3-NRAB-00003-040600
(04-3-600)

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 R. W. Jarvis and W. Stone, for payment of an additional 45 hours each at their respective rates, account Carrier violated the current Signalman's Agreement, particularly CSXT Labor Agreement dated October 30, 1998, the Scope Rule, and Rules 37, 38, 39, and 10, when on July 23, 2003 through September 2, 2003 Carrier allowed L&N System Gang 7K46 (a boring gang) to perform work covered under the former C&EI Agreement while the Claimants were furloughed. This claim is continuing until the violation ceases. Carrier's File No. 04-0003. General Chairman's File No. 3-25-8. BRS File Case No. 13051-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 Claimants R. W. Jarvis and W. Stone, asserting that the Carrier violated the current Signalmen's Agreement when it allowed an L&N System Gang to perform scope-covered work on the Claimants' territory while the Claimants were out of work on furlough.

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.

The Organization then turns to the Carrier's argument that Section 4 of the Agreement exempts boring teams from the terms of Section 2 and Side Letter No. 1, thereby allowing the Carrier to use a foreign boring team on any territory, even if there are furloughed employees on that territory. It maintains that contrary to the Carrier's position, Side Letter No. 1 addresses the concerns that the Organization had during negotiations about the maintenance of employment levels when utilizing the flexibility provided in the Agreement. Side Letter No. 1 prohibits the Carrier from using a foreign gang on the C&EI property unless employment levels are maintained. The Organization insists that the Carrier violated the Agreement when it allowed the L&N gang to work on the former C&EI territory while the Claimants were furloughed. According to the Organization, the Carrier also violated the Scope Rule and the seniority provisions of Rules 10, 37, and 38.

The Organization further asserts that even if the Board agrees with the Carrier's contention that boring teams are exempt from some of the provisions of the Flexibility Agreement, Side Letter No. 1 is an exception with which the Carrier did not comply.

The Carrier initially contends that the Organization clearly defined the temporal parameters of this claim both in the initial claim and before the Board. It urges the

Board to disregard the Organization's contention that the instant case represents a continuing claim. Citing a number of prior Awards, the Carrier asserts that a claim based on a single event is not a continuing claim. It argues that the Organization failed to prove that the instant claim is continuing in nature, and the Board should reject this assertion.

The Carrier contends that the parties' Agreement to create specialized "boring" teams, as set forth in Section 4 of the Agreement, was the culmination of a long-standing dispute between the parties on this and other component roads. It 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, the Carrier believes that it 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 has failed to comply with an inexplicable staffing requirement. The Carrier points out that Claimant Stone 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 further 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 its 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 failed to provide any evidence that would support its argument that the Carrier must maintain full employment in order to utilize a boring team on the C&EI property. 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 also 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. It contends, in addition, that Claimant Stone 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 Organization properly lodged the claim with the Carrier.

The Board reviewed the record and finds that the Organization failed to meet its burden of proof that the Carrier violated the Signalmen's Agreement when it allowed an L&N System Gang (a boring gang) to perform work covered by the former C&EI Agreement while the Claimants were furloughed.

The record is clear that boring gangs are not subject to the full employment clause of CSXT Labor Agreement No. 15-093-98. The Agreement states clearly in Part B that:

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

The Organization has been unable to submit sufficient evidence to support its position that the Carrier must maintain full employment in order to utilize a boring team on the C&EI.

Several Awards have come to the same conclusion, including Third Division Awards 34169 and 24538.

It is fundamental that although the Rule does restrict the Carrier's right to send a System Construction Team onto a property when there are furloughed employees, that Rule only applies to Signal Construction Teams. Boring teams are exempt from that noted provision as set forth above.

The Organization has the burden of proof in cases of this kind. In this case, the Organization failed to meet that burden and, 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.