

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42925
Docket No. SG-43165
18-3-NRAB-00003-150351**

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
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood that:

Claim on behalf of J.P. Courts, for three hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when, on January 20, 2014, it permitted two employees not covered by the parties’ Agreement to apply a shunt in the vicinity of Cheylan, WV, for the purpose of causing the signal at milepost CA 445.5 to display a restricted proceed indication for engine #7729, and thereby denied the Claimant the opportunity to perform work exclusively reserved those covered by his Agreement, and the opportunity to earn the wages associated with the performance thereof. Carrier’s File No. 2014-164656. General Chairman’s File No. 14-06-CD. BRS File Case No. 15240-C&O(CD).”

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 the Claimant, alleging that the Carrier violated the current Signalmen's Agreement when the Carrier allowed Carrier officers to apply a shunt wire across rails in order to perform an efficiency test on January 20, 2014, rather than assigning this work to the Claimant, resulting in a lost work opportunity and lost wages. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work at issue is generally recognized as signal work and reserved to signal employees, and because the Carrier violated the Scope Rule when it allowed management employees, who are not covered by the Agreement, to perform the work at issue. The Carrier contends that the instant claim should be denied in its entirety because the claim is not supported by the Agreement, because the Organization failed to meet its burden of proof, because the work at issue is not reserved to the Organization by the Scope Rule, because the work at issue is not reserved to the Organization by past practice, because the work at issue is not recognized as signal work on this property, because the installation of a shunt does not alter or modify the signal system, and because no remedy is due even if the claim were to be sustained.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the parties' Agreement when it utilized employees not covered by the Agreement to apply a shunt in the vicinity of Cheylan, West Virginia, for the purpose of causing the signal at MP 445.5 to display a restricted proceed indication. Therefore, this claim must be sustained.

The Carrier admits that it did not use signalmen employees to perform this work, but states that the work of installing a shunt is not covered by the Scope Rule. The Scope Rule states, in part, that it covers "all and other work generally recognized as signal work." The Organization has come forward with several examples of how this work has been considered to be signal work.

First of all, it provided a Settlement Agreement where a claim was allowed when employees other than signal employees were utilized to display the stop and proceed indication for the purpose of conducting an efficiency test. That settlement, which allowed the claim, was from 1975.

In addition, there is significant arbitral precedent, including Third Division Award 11507, which states, in part:

“It was established, as far back as Award No. 3688, that the installation of a temporary shunt is work generally recognized as Signalmen’s.”

(See also Third Division Awards 12627 and 18384.)

Since that Agreement and those awards recognize the work as signalmen work, the Board has no other choice other than to sustain this claim.

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 14th day of February 2018.