

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43793
Docket No. SG-44303
19-3-NRAB-00003-170389**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly C&O, Chesapeake District):

Claim on behalf of R. Broyles, S.S. Forson, J.I. Spriggs, S.T. Watkinson, and M.R. Waston, for Claimant Spriggs, 21 hours at his overtime rate of pay, and for the remainder of the Claimants, and any future incumbents to their positions, for all wages associated with work performed by CSXTN Signal Employees on the C&O Hocking District to be distributed properly to the Claimants, starting on November 21, 2015, and continuing until this dispute is resolved; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, and Rules 25, 33, 34, and 68; when on November 21, 2015, it removed signal equipment and sections of track from the C&O Hocking District, and placed it under a different Agreement (CSXTN), thereby denying the Claimants the opportunity to perform work exclusively reserved to them under their Agreement, and the opportunity to earn the wages associated with the performance thereof. Carrier should also be required to reassign the disputed signal equipment and sections of track to the C&O Hocking District and remove all CSXTN signal employees from the call list for trouble calls for said equipment. Carrier’s File No. 2016-200211. General Chairman’s File No. 16-01-CD. BRS File Case No. 15616-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.

In early to mid-November 2015, the Carrier completed Phase I of its Signal Reliability Obsolescence Project on the Columbus Subdivision, the purpose of which was to implement new technology in order to increase efficiency of service. Three signal houses were consolidated into a single new structure (located on the site of former East HV Cabin). A number of signals were retired, while new ones were erected in other locations. Employees from two different BRS-represented bargaining units had been handling the signal work in the area: one group (including Claimants here) worked subject to the CSXT C&O Chesapeake Division Agreement, while the other group worked under the CSXTN Labor Agreement in the Conrail Subdivision.

On November 21, 2015, Assistant Chief Engineer of Signals Jody Cox sent out an e-mail regarding plans for maintaining signals in the area going forward:

“After carefully reviewing the CP HV signal project layout as it existed before the recent cutover and the current configuration following the cutover, it has been determined that the new CP 138 signal maintenance belongs entirely to the BRS Conrail Seniority district. The new CP 138 layout incorporates four signal houses which are intricately interconnected into one control point know [sic] as CP 138, as opposed to the former layout which was separated into three separate control points, (CP 138-HV), East HV and West HV. The implementation of the new technology makes it impossible to separate the existing signal apparatus between the two seniority districts for maintenance purposes. CP 138 was

previously dispatched in its entirety by the CSX Great Lakes dispatcher, and continues to be dispatched by the Great Lakes dispatcher.

The former control point locations of HV, East HV, and West LM were previously maintained by the BRS C&O signal maintenance and are now considered to be retired. The signal maintenance of control point CP 138 was previously maintained by the BRS Conrail West seniority, and all signal apparatus of CP 138 will continue to be maintained by the BRS Conrail West seniority district.”

Cox’s decision transferred responsibility for approximately 3500' of track, five power-operated switches and two control points that had previously been maintained by signalmen on the C&O Hocking Seniority District from their oversight to signalmen in the CSXTN bargaining unit, Conrail West Subdivision.

The Organization filed the initial claim by letter dated January 8, 2016. Claimants are Independent Signal Maintainers, a Signal Inspector, a Lead Signal Maintainer and a Signal Maintainer, headquartered in Columbus, Ohio, or Delaware, Ohio. At the time of the transfer of responsibility, all five were working signal maintenance positions on the C&O Hocking Seniority District, which is part of the Columbus Subdivision. The Organization alleged that the Carrier violated the Scope Rule, Rule 25, Rule 33(a), Rule 34, and Rule 68 of the C&O Agreement when it unilaterally transferred scope-covered work to a different bargaining unit. The Carrier denied the claim by letter dated March 4, 2016, stating that the “retirement/consolidation of former interlocking’s and associated signal appliances” had resulted in no loss of work opportunity for the Claimants. The Carrier noted the signal work on “HV Cabin interlocking” was work that belongs to BRS members of the Conrail West seniority district and that the switches and signals described as C&O assets in Cox’s e-mail were retired. The Carrier also noted that “The reference in the email to CP-138 was made in error.” The Organization appealed on April 29, 2016, pointing out that the C&O signals had not been “retired,” but were still in place and functioning and that the Carrier had never contacted the Organization to attempt to negotiate a change in the C&O Agreement concerning the signal units and C&O seniority districts. The Carrier’s appellate response is dated June 17, 2016. The Carrier reiterated its position that the assets in dispute were now retired. Moreover, it stated, the Carrier has historically maintained the right to reconfigure, add or retire assets as necessary. The parties having been unable to resolve the dispute through the normal

claims procedure, the matter was appealed to the Board for final and binding adjudication.

The Organization argues that employees on the C&O Hocking Seniority District have maintained the disputed section of tracks and associated equipment for at least 70 years. The equipment has not been retired, but remains in service in its original locations. The Carrier acknowledged that Claimants were responsible for maintenance of the disputed equipment prior to the cut-in project. It is true, as the Carrier argues, that the HV Cabin control point was always maintained by Conrail West employees. However, the record shows that the new "HV Cabin control point" has been relocated to the location of the former "East HV Cabin control point," which was always within the jurisdiction of the C&O Hocking Seniority District. Through its actions, the Carrier unilaterally altered the C&O Signalmen's Agreement, which is a violation of Rule 68. The required process to accomplish such a change is to negotiate with the Organization in accordance with the Railway Labor Act. It is understood that the cut-in project resulted in the removal of signals and a change in the set-up of the three control points, which led to the Carrier's desire to alter the maintenance responsibilities and amend the seniority district territorial limits. But the Signalmen's Agreement requires the Carrier to go through the proper negotiation process, not act unilaterally. The Carrier's primary defense is that the disputed equipment and track segments were allegedly retired. A number of signals were removed, but the switches remained. East HV Cabin, which was maintained by the Claimants, was not retired—it was replaced and renamed "HV Cabin," which means that it remains on the C& Hocking Seniority District territory. The Board has ruled numerous times on the importance of protecting scope-covered work and the guiding principle that the Carrier cannot hand out such work to employees who have no seniority rights under the Agreement and are not scope-covered. The Board has also held that when the Carrier raises an affirmative defense, as it has done here, the burden of proof shifts to the Carrier to provide evidence, not mere assertions, to support its position. The Carrier's assertion that the equipment was retired does not constitute evidence that such is true; indeed, the track circuits on the sections of disputed track were still energized and in place. The claim must be sustained and Claimants made whole for a continuing violation of their right to perform the work at issue.

The Carrier strongly asserts that the assets at issue have been reconfigured, consolidated and retired, and therefore the Claimants have no ownership of the claimed work or claimed overtime. The HV Cabin is and always has been on the Conrail West

district. The Carrier has clearly shown the disputed assets are retired, as evidenced in the Project plans. The Organization has failed to show a violation of any rules and this claim should be dismissed in its entirety. The Carrier completed the Signal Reliability Obsolescence project in order to update and consolidate its systems. Three signal houses were consolidated into one control point. The former signal assets of HV Cabin, East HV Cabin and West LM Cabin were retired as a result of the project. There is no arbitral support for the notion that advances in technology should be blocked by collective bargaining agreements. It is the responsibility of the Carrier to direct the workforce and maintain efficient operations, which is what these signal upgrades do. Nothing the Agreement requires the Carrier to hold obsolete and inefficient assets for the sole purpose of retaining maintenance work for the Claimants, and absent language in the Agreement prohibiting the Carrier's actions, it is free to take action. The Organization has failed to prove every element of its claim, and the claim must be denied.

The Carrier is correct when it maintains that it has an obligation to be as efficient as possible, and the Board recognizes management's right to, as the Carrier put it, "reconfigure, consolidate and retire" assets. The Signal Reliability Obsolescence Project was clearly designed to streamline and make signal operations in the disputed area more efficient: three (possibly four) signal cabins were consolidated into one, and at least five sets of signals were removed while another set was installed in a different location. Prior to implementation of the project, the signal equipment in the area was maintained by individuals in two different bargaining units, apparently without dispute. The fundamental question raised by this claim is: after the changes, who has jurisdiction over the newly configured signal equipment in the area? The Assistant Chief Engineer of Signals decided that only one bargaining unit should maintain the area, and that unit would be the Conrail West unit.¹ The Organization's position is that the C&O Hocking Seniority District retains jurisdiction over any signal equipment in the area where it had previously been assigned to work. The Carrier defends on the basis that all of the equipment in dispute was retired, so there is nothing left that "belongs" to the C&O Hocking group.

¹ There are hints in the record that this decision may be related to the Carrier's decision to relocate operations from the Huntington Dispatch Center to the GSX Great Lakes Dispatch Center, but there is insufficient information in the record for the Board to be able to draw any conclusions.

The record establishes that prior to the Signal Reliability project, Claimants were assigned to signal maintenance in the area that was affected by the project. There are “before” and “after” diagrams in the record that detail the changes made. The evidence in the record is difficult for the Board to interpret. The Carrier submitted the official engineering plans for the project. Unfortunately, reducing them to fit on a single 8½" x 11" sheet of paper has rendered them illegible, even under magnification. The Organization submitted simpler diagrams that the Carrier acknowledged at the arbitration hearing were “pretty accurate.” The diagrams include a key indicating which color-highlighted assets were maintained by C&O Hocking and which by Conrail West. Regrettably, copying the diagrams in black and white reduced the colored highlights to similar gray tones, making it impossible to distinguish which was which. Nonetheless, one can readily see from the before and after diagrams that a number of signals were removed, four pairs in the area under the "Dennison Avenue" diamond and another pair immediately to the left of the vertical track or line shown running from the Grandview Yard due north (as the diagram is oriented on the paper) to Dennison Avenue. Another pair of signals was installed at the location marked 001 and 005, right above the area denoted as “NS Main” on the “before” diagram. The signal equipment in the “NOHEAT” area on the left side of the “before” diagram and the signal equipment on the far right of the "before" diagram appears unchanged. The "before" diagram shows three signal houses, the HV Cabin to the left, the East HV Cabin in the middle, and the West LM Cabin on the right. The “after” diagram shows a single cabin labeled “HV Cabin” in the location of the former East HV Cabin. The Organization acknowledges that certain equipment was removed; the claim addresses what is left. The Carrier contends that all equipment previously maintained by C&O Hocking was “retired.” There is no solid evidence of that assertion as it relates to specific signals and switches. Assistant Chief Engineer Cox’s e-mail, which supposedly explains the Carrier’s decision, is confusing: in its initial declination, the Carrier stated that Cox’s references to “CP-138” were a mistake. In addition, Cox states, incorrectly, that all three signal cabins were maintained by C&O, when the other evidence in the record is that C&O maintained East HV and West LM, while ConRail maintained HV Cabin. The Carrier states that because ConRail maintained the HV Cabin and it is the only cabin left, it should still be maintained by ConRail. The problem with that argument is that all three cabins were taken down and a new Cabin built on the location of East HV Cabin. Calling it the “HV Cabin” does not change the fact that it in fact appears to be a new East HV Cabin. Certainly, one can understand the Organization’s concern that a signal house that it had previously maintained was now deemed under the jurisdiction of a different bargaining unit.

The Carrier contends that it acted within its management rights to implement the Signal Rehabilitation Project and that it properly assigned the remaining signal maintenance duties to the ConRail unit. In its submission, it quoted from Second Division Award 7583 (Wallace 1978): “This Board has previously held that a carrier should be free to change its operations and effect economies so long as such actions do not run counter to its contractual obligations to its employees.” The critical language here is the limitation imposed by the last phrase “so long as such actions do not run counter to its contractual obligations to its employees.”

The Scope Rule in the CSXT C&O Agreement reserves work within certain areas to C&O unit employees. Rule 34, Seniority Districts, Limits, defines the Hocking Seniority District: “Between ‘CH’ Cabin MP 87.9 and MP 120—Columbus Sub.; All Athens and Connection Subdivisions—Off Columbus Sub.; All Hump Yards—Columbus Sub.” Rule 68 states:

“This Agreement shall supersede and be substituted for the Agreement reprinted May 16, 1958. It is effective March 1, 1981, except as otherwise indicated. *It shall remain in full force and effect until superseded or amended in accordance with the provisions of the Railway Labor Act.* (Emphasis added.)”

Pursuant to Rule 68, the only way to remove territory that is covered by the Scope Rule and Rule 34 from the jurisdiction of the C&O Agreement is for the Agreement to be superseded or amended—presumably through negotiations with the Organization.

The Organization has established that Claimants historically and traditionally maintained signal equipment in the disputed area. After the cut-in for the Signal Rehabilitation project was complete, the Carrier acted unilaterally in assigning responsibility for signal equipment in that area to a different bargaining unit. It did not notify the Organization of its proposed action and it did not negotiate with the Organization before acting. Without an affirmative defense from the Carrier, such conduct would violate the Agreement. The Carrier defends on the basis that the equipment formerly maintained by Claimants was all “retired” and there is no equipment left under the C&O jurisdiction, but there is no concrete evidence to support that assertion. The “before” and “after” diagrams suggest that at least some of the equipment maintained by C&O employees remains in service.

One can understand that, as a matter of efficient operations, the Carrier would like to have one group of signalmen maintaining equipment in the area under consideration, not two. But it is constrained by its undertakings in the Agreement from acting unilaterally to take jurisdiction for territory covered by the Agreement away from C&O employees and give it to a different bargaining unit. The appropriate course of action is for the Carrier to engage in negotiations with the Organization about how to facilitate more efficient operations, including a transfer of territory. At a minimum, if all of the equipment maintained by C&O employees *was* retired, the Carrier will have an opportunity to demonstrate that with specificity.

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 16th day of July 2019.