

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43794
Docket No. SG-44331
19-3-NRAB-00003-170420**

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 Louisville & Nashville):

Claim on behalf of W.H. Smith, for 40 hours at his overtime rate of pay; account Carrier violated the current Signalmen’s Agreement, particularly the Rules 7, 25, 32, and 51; when, on November 23-24, 2015, it permitted employees from System Signal Construction Gang 7V17, who are restricted to construction work, to perform the maintenance work of replacing existing highway grade crossing warning lights at East Tri-County Boulevard, thereby denying the Claimant the opportunity to perform this work. Carrier’s File No. 2016-200790. General Chairman’s File No. 16-158-01. BRS File Case No. 15646-L&N.”

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 parties have agreed over the years not only to a Scope Rule that establishes the work that BRS-represented employees have rights to. They have also developed rules for work jurisdiction for BRS-represented employees within the Carrier's property. Rule 32, Seniority Districts, states, in part:

"Effective as of May 1, 1961, each employee will hold seniority on one district only. The districts as now established shall not be changed except by agreement, and are as follows:

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3. Cumberland Valley Division: Knoxville and Atlanta Division.

Corbin, Ky., M.P. 172 plus 1864 ft, to Norton, Va., and all subdivisions and branches on the Cumberland Valley Division.

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In addition to Seniority Districts, the parties have negotiated work jurisdiction limits for BRS-represented employees who perform different types of work, such as routine maintenance versus new construction. Rule 51 — System Gangs — Special Rule states, in relevant part:

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

At the time this dispute arose, the Claimant, W.H. Smith, was a Signal Maintainer headquartered in Knoxville, Tennessee, on Seniority District No. 3. On November 23 and 24, 2015, the Carrier utilized employees from System Signal Construction Gang 7V17 to upgrade standard crossing lights to LEDs at Mileposts 0KD265.65 and 00C264.46, on the KD Subdivision, in Claimant's territory. On November 23, 2015, three employees from Gang 7V17 worked five hours each at East Tri-County Boulevard (Milepost 0KD265.65). On November 24, 2015, three employees again worked five hours each to complete the work at East Tri-County Boulevard. One employee from Gang 7V17 worked ten hours at Ball Camp Pike (Milepost 00C264.64),

changing signage. The Organization filed this claim on January 20, 2016. The parties having been unable to resolve the dispute through the regular claims procedure, the matter was appealed to the Board for final and binding adjudication.

The Organization contends that having members of Construction Gang 7V17 replace the lights with LED bulbs violated Rules 32 and 51, in that system construction gangs are confined to new construction, except for necessary maintenance changes in connection with a construction project. The work in dispute was not new construction or related to a construction project. It was an upgrade to an existing crossing, not a new installation of a crossing. The Claimant is assigned to this section of track, with the responsibility of ensuring all crossing equipment is in good working order. System Signal Construction Gang #7V17 is assigned to the entire former L&N Railroad. Construction forces are not permitted to perform regular maintenance work exclusively granted to regular signalmen except when it is related to a construction project or in an emergency, neither of which existed here. The Carrier argues that similar work has been performed by construction gangs without objection from the Organization. Each signalman's territory encompasses miles, and he might not see a construction gang at work in one area if he is working in another one. Had the Organization known that construction gangs were performing this work previously, it would have filed claims. The Claimant lost a work opportunity and should be reimbursed.

The Carrier responds that the Claimant did not lose a work opportunity, as he was fully employed on both November 23 and 24. Furthermore, the work that was performed was not maintenance work on existing signal apparatus, but was construction and installation of upgraded equipment at a crossing as part of the Tennessee Department of Transportation Safety Modification Project. The Project included the installation of upgraded crossing lights and signage at the locations cited in the claim. This work has been performed in the past, at other crossings, by a construction team, with no protest by the Organization. The Agreement does not define construction work or maintenance work. Applying the ordinary dictionary definitions of the two words, maintenance activities involve keeping equipment working in its existing state to prevent malfunction or deterioration. Maintenance activities are typically performed on a day-to-day basis to preserve the original condition of the equipment, whereas construction activities improve upon the original condition. Replacing signal lights with the new, identical lights is maintenance. However, replacing signal lights with new, improved LED fixtures as part of an overall Project to install upgraded crossing equipment is construction. In addition, the language of Rule 51

permits construction teams to perform maintenance activities in connection with construction projects. The work at issue was in conjunction with the installation of upgraded equipment at many railroad crossings and part of the larger Safety Modification Project in the state. The Organization has not shown through probative evidence that the use of a System Construction Gang to perform crossing equipment upgrade installations constitutes a violation of the Louisville & Nashville collective bargaining agreement, and the claim should be denied. If the claim is granted, the remedy sought is excessive: two days of work does not translate into forty hours' overtime.

The Carrier contends that upgrading the signal lights was part of a state-wide Safety Modification Project and that, as such, using a construction gang to upgrade the lights to LEDs was either construction or maintenance in connection with a construction project, either of which is permitted by Rule 51. However, there is no mention in the record below of the Tennessee Department of Transportation or a state-wide Safety Modification Project. The Board is limited to deciding cases on the record developed on the property below and cannot consider new information or argument that is raised for the first time at the arbitration hearing. As a result, the Board must reject that argument from the Carrier.

Rule 51 establishes limited parameters for the work that System Signal Construction Gangs may perform: (1) construction work on new installations; (2) necessary maintenance changes in connection with construction projects; and (3) in emergencies. The Board has addressed the distinction between work that is exclusive to regular maintenance forces and work that is permitted to signal construction gangs. In Third Division Award No. 37484 (Meyers, 2005), the Board held:

“The Organization has shown that the work in question did not constitute new construction and therefore should have been performed by the Claimants. The Board has no choice but to sustain the claim...

... The System Signal Construction Gangs were established for the purpose of performing construction work and the work in question was not construction work but simply involved maintenance of existing equipment or systems... . [T]he System Signal Construction Gangs are only to be there for installation of new equipment and systems and the major revision of existing systems. The work that was performed here did not fit into those categories....”

The record below does not include any evidence that the work in dispute was part of either new construction or maintenance in connection with a construction project, nor was there any emergency. Replacing one type of light bulb with an LED bulb is not on its face such a significant change that it appears to be new construction rather than maintenance. Accordingly, the Board finds that the Carrier violated Rule 51 when it assigned Signal Construction Gang 7V17 to replace the lights at issue here.

The claim seeks a remedy for the Claimant of forty hours' overtime. The Carrier assigned a team to replace the bulbs. Had it assigned the work to regular signalmen, it is likely that more than one person would have been assigned to the project, which took only two days. The Claimant is entitled to sixteen hours' overtime (two days), but not more.

AWARD

Claim sustained in accordance with the Findings.

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.