

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43799  
Docket No. SG-44540  
19-3-NRAB-00003-170733**

**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 D.S. Bradberry, R.D. Davis, F.P. McCoy, T.R. Okes, and G.A. Painter, for 5 hours each at their respective overtime rates; for Claimants Davis, Okes, and Painter \$243.90; for Claimants Bradberry and McCoy \$242.70; account Carrier violated the current Signalmen’s Agreement, particularly Rule 43, and PTC Labor Agreement CSX 15-063-10 when on April 5, 2016, it permitted C&O System PTC Force, #7Z19 to perform contractually restricted maintenance work on the New River Subdivision, Milepost 400.8, instead of assigning the work to the Claimants, thereby causing them a loss of work opportunity. Carrier’s File No. 2016-206858. General Chairman’s File No. 16-41-CD. BRS File Case No. 15738-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 this claim after a PTC Gang, #7Z19, repaired a broken signal at Milepost 400.8 on the New River Subdivision on April 5, 2016. The original claim, filed on May 31, 2016, alleged that the Carrier had violated Rule 43 of the Agreement as well as PTC Labor Agreement CSX 15-063-10. The Carrier denied the claim by letter dated July 17, 2016, stating that the repair was occasioned by an emergency—a tree had fallen on the signal and knocked it down, impacting service. Emergencies are one of the exceptions in Rule 43, and there was no basis for a claim. The Organization appealed by letter dated September 21, 2016. For the first time, the Organization cited Rule 25, Work Outside Assigned Hours, as one of the bases for the claim; it also attached various Carrier operating rules and a photograph of a signal head. The Carrier responded by letter dated November 15, 2016, again declining the claim. The claim was procedurally defective in that the Organization had submitted an amended claim in its appeal by citing Agreement and Operating rules that were not cited in the initial claim. The Carrier's position on the merits remained the same. The parties met in conference on May 5, 2017. That same date, the Carrier forwarded to the Organization an e-mail from the local Manager of Signals regarding the incident, dated July 27, 2016. On July 21, 2017, the Organization submitted an additional letter and written statements from two of the Claimants dated July 21, 2017. The parties having been unable to resolve the dispute through the normal claims process, the matter was referred to the Board for a final and binding decision.

According to the Organization, the Carrier violated the clear and unambiguous language of Rule 43 when it had a PTC gang of five employees perform routine maintenance work. The Carrier did not deny the violation, but relied on an alleged "emergency" to justify the assignment. The Carrier has the burden of proof in establishing the existence of an emergency. The evidence in the record does not support the assertion that an emergency existed, and as this Board has held in the past, "mere assertions of emergency are insufficient." The Carrier provided no details such as the nature of the defects or hazards and the significance of the broken signal's impact on operations. Trains continued to run through the area. The signal was not knocked over entirely, as the Carrier contended, merely knocked askew when the tree struck it. The

broken signal was originally reported on April 3, 2016, but it was not repaired until April 5, 2016. These facts are not indicative of an emergency.

The Carrier's position is that first, the claim is procedurally defective and must be dismissed. It is well settled that a claim cannot be amended on the property, which the Organization did when it introduced Rule 25 and Operating Rules in its appeal. The claim also fails on the merits. The Carrier complied with Rule 43 when, during an emergency, it assigned two PTC Installation crew members to assist regular signal maintenance forces in replacing a signal knocked down by a tree. The "emergency" exception in Rule 43 is not limited to the enumerated examples, which are only illustrative. The Board has recognized that an emergency is an "unexpected event" that requires an immediate response, which the broken signal did. The Board has also recognized that the Carrier has great latitude in use of its forces during an emergency. Train service does not need to be stopped to constitute an emergency. There was no violation of Rule 43, and the Board should not consider any other cited rules and agreements. Regarding any remedy, the claim is for overtime, but the work did not require nor was it done on overtime. Moreover, the claim is for five hours and the job only took 2 hours, 45 minutes. Finally, one of the claimants, Maintainer Painter, would not be entitled to any remedy because he worked on the job.

The Board must first address the Carrier's argument that the claim is procedurally defective and must be dismissed because the Organization improperly amended the claim when it added Rule 25 and the Carrier's Operating Rules in its appeal of the original declination. The Carrier is correct that the Organization acted improperly when it introduced Rule 25. However, the claim as presented to the Board by the Organization references only Rule 43 and the PTC Labor Agreement, which were cited in the original claim. If any part of the claim as presented to the Board involved Rule 25, the Board would have to dismiss it. However, the Organization argued the claim to the Board solely on the basis of Rule 43 and the PTC Agreement. The Board will not dismiss the case based on the procedural defect, which was cured when the Organization dropped any reference to Rule 25 in its submission and presentation to the Board.

**Rule 43, System Gangs, states in relevant part:**

**"(a) ... Except for signal work in connection with new rail laying, necessary maintenance changed in connection with a construction**

project, and in emergency cases such as derailments, floods, snow blockades, fires, and slides, system gangs will be confined to construction work on new installations.”

CSXT Labor Agreement No. 15-063-10, Attachment A, addresses how work will be allocated between PTC gangs and regular Signal forces:

**“Section 1 — PTC Installation Teams**

- A. PTC Installation Teams will perform all aspects of positive train control installation, work generally considered with the Scope(s) of the respective schedule Agreement(s).**

**Section 2 — Positive Train Control Work — Post Installation**

- A. Following the installation of Positive Train Control Systems, as identified in Section 1 above, future installations, maintenance, and repair of such systems and equipment will accrue to BRS represented employees under the terms of the existing schedule Agreement(s).”**

Rule 43 limits Signal Gangs to “construction work on new installations”—“Except for signal work in connection with new rail laying, necessary maintenance changes in connection with a construction project, *and in emergency cases such as derailments, floods, snow blockades, fires, and slides...*” It applies to PTC Teams as well. There is no dispute that PTC Team 7Z19 assisted in repairing the broken signal at issue here. The crux of this claim is whether the circumstances of the broken signal constituted an emergency under Rule 43. The record includes a July 27, 2016, e-mail from David Cook, the local Manager of Signals, about what transpired:

**“This signal was damaged by a tree that fell off of the mountain. As far as the claim of having the bucket truck available that is not true. The only bucket truck that we have was in the shop for service and inspections in Covington, VA 90 miles away. Due to that my request was for a boom truck and an operator, not the whole team, to help replace the top head. Inspector Goins and Maintainer Painter, one of the claimants, were on site to wire and cut in the signal. On 12:46 on 04/05/16 I received a message**

that stated they were just getting track time, and at 15:31 on 04/05/16 I received a message that the task was completed, therefore there was no overtime for the construction team and the total time was 2 HR 45 MIN.”

Cook’s statement is consistent with the Organization’s allegation that the signal was not knocked down altogether—only the top head needed replacing. (It is also consistent with the two Claimant statements.) The signal was out of service, however. The record also establishes that train traffic continued to run past the broken signal, although it is not clear whether that traffic was running at a reduced speed. Overall, the situation was not one that meets the classic definition of an emergency as a calamitous unexpected event. Nonetheless, the signal needed to be returned to service as quickly as possible. According to Cook, he requested only a boom truck and operator, not the entire PTC Team, to assist the regular signal maintenance forces, due to the fact that their normal bucket truck was in the shop. There is no evidence in the record to contradict that. In fact, from the record overall, it appears that the Carrier had every intention of assigning its regular maintenance forces to repair the signal until it realized that there was no bucket truck readily available. It took the expedient step of requesting a bucket truck and operator from a PTC Gang—not the whole gang, who showed up anyway. While the situation was not an emergency on a grand scale, calling in the PTC Team’s bucket truck and operator because there was not one available to the local maintenance forces falls narrowly within the emergency exception to Rule 43. The signal needed to be repaired as soon as possible, and waiting for the local bucket truck to be repaired and inspected would not have made sense. In addition, any violation of Rule 43 was limited: at least two of the regular signal forces were assigned to the repair. (The record does not indicate how many individuals were required to replace the signal head.) All things considered, the Carrier’s actions were designed to address an exigent mini-emergency and to limit the adverse impact on regular forces. Considering the circumstances as a whole, the Board concludes that the Carrier did not violate the Agreement when it sought limited equipment assistance from a PTC Team to enable it to repair the broken signal expeditiously.

### **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.**