

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43800  
Docket No. SG-44596  
19-3-NRAB-00003-180024**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):**

**Claim on behalf of C.T. Brasher, D.R. Clary, M.I. Lewis, R.M. Shocklee, R.L. Thompson, J.E. Wade, C.M. Whitsell, and D.M. Young, for all hours worked by SSCG #7X40 performing Maintenance work at their respective overtime rates, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 17, 18, 31, 32, and 51, when on March 16-18, 21-24, 2016, March 28-April 1, 2016, and April 4-8, 2016, it permitted a Signal Construction Gang to perform maintenance work, thereby denying the Claimants the opportunity to perform work exclusively reserved to them, and the opportunity to earn the wages associated with the performance thereof. Carrier’s File No. 2016-205991. General Chairman’s File No. 16-71-02. BRS File Case No. 15795-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.

This dispute arose in March and April, 2016, when the Carrier utilized employees from System Signal Construction Gang (SSCG) #7X40 to install switch machines, disconnect and reconnect track circuits, and install and remove defect detectors in Seniority District 7, on the Henderson Subdivision. The Claimants were all assigned to Signal Maintainer positions in the District. The Organization alleges that the work performed by SSCG #7X40 was routine maintenance work that should have been assigned to the Claimants. The claim was filed May 15, 2016. The Carrier denied the claim, stating that it was vague and unsupported by substantial evidence. 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 per Rule 51, System Signal Construction Gangs are limited to performing construction work. On March 16-18 and 21-24, 2016, and March 28-April 1, 2016, and April 4-8, 2016, the Carrier violated Rule 51 when permitted SSCG #7X40 to perform routine maintenance work in Seniority District 7, in the Claimants' territories. The record shows that the work consisted of repairing and replacing *existing* equipment and was therefore routine maintenance, not construction work. The Carrier has records of what every employee is doing on a daily basis and it has not established that the work at issue was construction work that an SSCG could be permitted to perform.

The Carrier maintains that the claim is vague and indefinite, excessive and without merit. The Organization has only listed a series of dates that work was done, without specifying the exact dates on which work was performed, how many hours on each date work was performed, and where the work was performed. There is no proof that any of the Claimants suffered a lost work opportunity, as they were all fully employed on the dates in question. It is well-established that in jurisdictional disputes, the burden of proof on the Organization to establish a violation of the Agreement is heavier than in other cases. *See, e.g.,* Third Division Award 37248 (Perkovich, 2004). The Organization has produced no substantive evidence and has made only unsupported allegations in its claim that the work occurred and that it was maintenance work.

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.”

The record developed on the property is thin, and the Board concludes that the Organization has not met its burden of proof. The Organization alleges that the work in dispute was routine maintenance, but there is no evidence of what exactly SSCG #7X40 did. The work described by the Organization in the claim could have been new construction or maintenance performed in connection with a construction project, which Signal System Construction Gangs are permitted by Rule 51 to perform. In the absence of more specific evidence supporting the Organization’s allegations, the Board has no choice but to deny the claim.

**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 16th day of July 2019.