

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44823  
Docket No. SG-46624  
23-3-NRAB-00003-210375**

**The Third Division consisted of the regular members and in addition Referee Michael D. Phillips 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 Baltimore & Ohio):**

**Claim on behalf of BRS Local 94, for Carrier to cease allowing Construction employees from other properties to perform maintenance work on the B&O territory; account Carrier violated the current Signalmen’s Agreement, particularly CSXT Agreement 15-18-94 Definitions: Construction Work, CSXT Agreement 15-018-16 Section 1(C), beginning on November 18, 2019, it allowed Team 7X51 from the CSXTN (Prior Conrail) to work on the B&O Agreement property. Carrier’s File No. 19-32653. General Chairman’s File No. 19-41-94. BRS File Case No. 16383-B&O. NMB Code No. 193.”**

**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 case involves a claimed violation of CSXT Labor Agreements No. 15-18-94 and 15-018-16, when the Carrier allegedly assigned construction employees from the former Conrail property to perform software upgrades on former B&O property, which the Organization contends is reserved to B&O maintenance forces.**

**The Organization submitted the instant grievance on November 25, 2019, contending that the Carrier violated CSXT Agreement 15-18-94, particularly the definition therein of construction work, and CSXT Agreement 15-018-16, particularly the portion which provides that “work specified herein . . . will not be removed from such employees on the former property at which such work was performed by past practice or by agreement on the effective date of this agreement.” The grievance alleged that, starting on November 18, 2019, and continuing, Construction Team 7X51 (former Conrail) had been and was currently installing software upgrades on existing B&O equipment from intermediate location BI 60.7 to Attica Junction BI 8.1. The Organization claimed that the Carrier must stop work being done by non-B&O maintenance signal employees and that maintenance employees should be provided training to complete their contractually reserved duties.**

**The Carrier denied the claim, stating that the Organization had not provided any proof that a former Conrail construction team was performing scope covered work that had been assigned exclusively to B&O employees to the exclusion of other employees. It also contended that the Organization had not provided proof that team 7X51 was working in the area claimed, the names of the employees on the team, or how many hours each employee was alleged to have performed the work in question. The Carrier likewise claimed that the Organization had not provided proof regarding the dates in question or of any employee aggrieved by the alleged rule violation. It states that the claim was vague and procedurally flawed, and that the Organization had not met its burden of proof.**

**The Organization submitted an appeal, arguing that software updates are done periodically with many types of electronic devices, and that this type of work has long been considered maintenance work, not construction. It stated that the work in question did not involve installation of new equipment or a major revision of existing equipment, which would meet the definition of construction work in Agreement 15-18-94. The Organization asserted that maintenance work on B&O property should be performed by B&O maintenance employees, and that the Carrier was obligated to ensure that B&O maintenance employees are trained to perform software upgrades without having former Conrail construction gangs performing B&O scope covered work.**

The Organization also stated that a company officer had been questioned about construction gangs doing software upgrades, and that he had written back that the practice would stop. It added that the grievance was not a monetary claim, but it reiterated that the challenged practice should stop and that the Carrier should comply with the applicable agreement reserving the work to B&O maintenance employees.

The Carrier denied the appeal, again maintaining that no violation of the cited agreements had been established. It again stated that there was no evidence to show that the construction team was performing software upgrades at Attica Junction on the date alleged or any other date. It also repeated its assertion that proof regarding other elements of the claim was lacking. With respect to the email communication from the manager referred to in the Organization's appeal, the Carrier contended that the Organization had taken the email out of context, and that it only said, "we have corrected the issue." It concluded that the Organization's position was only speculation and conjecture, which was insufficient to establish a rule violation.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the agreement in question is clear and unambiguous, and that it reserves the work in question to B&O Seniority District maintenance forces, not a construction team from a different seniority district. It asserts that the agreement prohibits the Carrier from unilaterally ignoring the seniority of the B&O employees, and that the Carrier should cease its practice of assigning others to the work. The Organization quotes the definition of construction work from the agreement, and it reiterates its position that the software upgrades are not within that definition. It states that the record adequately identifies the challenged work, noting that the Carrier manager conceded that the issue had been corrected.

The Organization cites multiple awards which have addressed employees from one seniority district working on another, and it describes a guiding principle therein that a Carrier cannot hand out work to employees who are not assigned to positions on a seniority district. The Organization contends that the Carrier is attempting to obtain something that is not contained in the agreement, but that the Board cannot grant such a request, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains its position that no violation of the cited agreements has been established. It reiterates its contention that the claim is vague and lacking necessary information, such as dates or evidence of who allegedly performed the software upgrades at Attica Junction or elsewhere. The Carrier adds before us the argument that the claim is moot, because the Carrier manager stated that the “issue” was corrected, and it claims there is nothing for us to decide now. It cites prior awards for the principle that, where a grievance is moot, it should be dismissed. Finally, the Carrier notes that the Organization has presented no specific claimants and is not asking for monetary relief, but rather it is only asking that the practice be stopped. It asserts that the Board is not authorized to issue injunctive relief, and it concludes that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the Organization has met its burden of establishing a violation of the cited agreements when a construction team from the former Conrail property performed the software upgrades on the B&O seniority district. We also agree that the work in question does not meet the definition of construction work under the cited agreement. It is our opinion that the Organization provided sufficiently specific details regarding the violation, and that the Carrier’s assertions to the contrary are unconvincing. We note that a specific former Conrail employee was named in the email communication described above, and that the manager who addressed the matter apparently had no issue with identifying what work was at issue.

The principles of seniority and how they impact various employees’ rights to work on their seniority districts have been explored in many prior awards, and we do not believe it is necessary to rehash them now. Whether or not the manager’s response that “we have corrected the issue” can be considered a concession that the practice here was improper, we find that the use of employees with no B&O seniority to perform maintenance work on the B&O seniority district was not permissible under the agreements in question.

With respect to the remedy for the violation, we note that the Organization has not claimed financial damages, so there is no monetary aspect to our finding. We are also not empowered to issue injunctive relief. Our holding here is limited to the finding that the Carrier’s assignment of construction teams from outside the B&O seniority district to perform the maintenance work described in the claim before us is a violation of the cited agreements. Whether monetary damages would be appropriate for an alleged loss of work opportunity in connection with possible future similar violations is

not before us now, and the outcome of any such claims would depend on the facts developed therein.

**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 21<sup>st</sup> day of December 2022.