

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44828
Docket No. SG-46851
23-3-NRAB-00003-200985**

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 Louisville & Nashville):

Claim on behalf of R.W. Larson, for 40 hours at his respective overtime (sic) rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Agreement 15-122-93 Rule 2 when, on April 29, May 1-2, 13, and 15, 2019, Carrier allowed a signal construction employee to perform scope covered work on the Claimant’s territory at Middle Etowah Crossover, Signal 338, Signal 341, Signal 345, Signal 349, and North and South Ends of Ocoee. Carrier’s File No. 19-37656. General Chairman’s File No. 19-137-03. BRS File Case No. 16305-L&N. NMB Code No. 156.”

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.

At the times relevant to this case, Claimant R. W. Larson was a Signal Inspector headquartered in Knoxville, Tennessee. This case involves a claimed violation of Rule 2 of the applicable agreement when the Carrier assigned a Signal Construction employee to test relays at several locations on the Claimant's assigned territory.

The Organization submitted the instant claim on June 21, 2019, contending that the Carrier violated CSXT Labor Agreement No. 15-122-93 and Rule 2, which defines the duties of a District Signal Inspector, when it assigned the Signal Construction employee to perform duties of testing relays on the Claimant's territory. The claim listed five specific dates when the work was performed, and it requested payment of 40 hours straight time at the Signal Inspector's rate of pay.

The Carrier denied the claim, stating that the employee who performed the work in question was an Inspector Test for the Western Region Construction team, who is required to perform tests of equipment prior to it being approved for placing in service. It stated that, at the time of the testing, the equipment was not yet in service, and that the Inspector Test was performing work within the duties and responsibilities of his job classification for the construction team.

The Organization submitted an appeal, stating that past practice has been established for the District Signal Inspector to test relays and complete all paperwork relating thereto. It alleged that only in this instance has a construction employee completed such work on the former L&N territory.

The Carrier denied the appeal, again maintaining that no violation of the cited agreement had been established. It stated that the Organization had provided no evidence of an alleged past practice, and it again stated that the work in question was properly assigned to the Inspector Test on the Construction Team, quoting the agreement definition of the duties of an Inspector Test.

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 work in question should have been assigned to the Claimant, as it was work which is described as that of a Signal Inspector in Uniform Rule 2. It states that the agreement language is clear and unambiguous, and that the Carrier does not have the right to assign that work to a construction inspector.

The Organization cites multiple awards which have held that agreement language must be applied as written, and it asserts that there is no need to look beyond the language of Rule 2. It also cites awards which have held that the Carrier may not hand out work to employees who are not assigned to positions on the applicable seniority district. The Organization contends that it was improper for the Carrier to assign the Claimant's work to an employee from another seniority district, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains its position that no violation of the cited agreement has been established. It reiterates its contention that the work in question was new construction, and that the rule relied on by the Organization does not reserve such work to a District Signal Inspector. It states that the equipment being tested was newly constructed and that the tests were performed so that it could be placed into service for the first time. The Carrier cites the Inspector Test classification of work rule as specifically covering such work.

The Carrier also cites multiple awards for the principle that construction teams can perform any scope-covered work, including maintenance activities, in association with construction projects. It states that the Organization did not provide any evidence to establish that the Claimant was exclusively entitled to the work, nor did it provide any evidence pertaining to an alleged past practice. The Carrier posits that the Organization has not met its burden of proving an agreement violation, 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 are unable to find that the Organization has established a violation of the cited agreement. Although Rule 2 does include in its description of the job duties of a District Signal Inspector the inspection and testing of signal appliances or apparatus, the duties of an Inspector Test also include such work. In fact, the description of the duties of an Inspector Test are more specific in its inclusion of performing "the final inspection and verification of equipment upgrades and/or new installations of equipment." The issue therefore appears to be whether the work in question was a new installation or if it was testing of existing equipment.

In this case, we find no evidence to contradict the Carrier's assertion that the work in question involved new installations. We also find no evidence of an alleged past practice which would reserve such work to a District Signal Inspector. It is fundamental that the Organization bears the burden of proving that a challenged action is contrary

to the applicable agreement provisions, and we find that the evidence presented here is insufficient to meet that burden. Therefore, we must 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 21st day of December 2022.