

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44829
Docket No. SG-46853
23-3-NRAB-00003-210351**

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 Seaboard Coast Line):

Claim on behalf of M.J. McCoy, for compensation between the C&S Maintainer rate of pay (\$42.15) and the rate of his former Signal Technician rate of pay (\$46.06) beginning August 28, 2019, until reinstated to his Signal Technician position, account Carrier violated the current Signalmen’s Agreement, particularly the Agreement between CSXT, Inc. (former SCL, GA RD, AWP & WRA) and its Signal Department Employees, CSXT Agreement No. 15-018-16 Consolidation Agreement, and CSXT Labor Agreement S-032-89 Atlanta Terminal Agreement and Uniform Rule 11, when it abolished the Signal Technician position and reposted it as a C&S Maintainer with the expectation of performing the same class of work at the reduced rate of pay. Carrier’s File No. 19-30706. General Chairman’s File No. SCL-10-18-19A. BRS File Case No. 16474-SCL. NMB Code No. 164.”

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 Claimant in this case is M. J. McCoy, who prior to the dispute, was assigned as a Signal Technician, headquartered at the Atlanta Terminal in Atlanta, Georgia. On August 28, 2019, the Carrier abolished the Signal Technician position, and the Claimant exercised seniority to a C&S Maintainer position, headquartered at Fairburn, Georgia.

The Organization submitted the instant grievance on October 18, 2019, contending that the Carrier violated, among other things, the Atlanta Terminal Agreement and Uniform Rule 11 – Preservation of Rates and Positions. It cited Section 2 of the Atlanta Terminal Agreement which identified the initial positions for carrying out signal work within the coordinated terminal, which included two Signal Technicians, one of which was designated as former SCL property. The claim noted that the other Signal Technician position had been abolished previously, so that the Claimant had been the only Technician remaining to perform Technician work in the terminal. The claim asserted that the Carrier could not eliminate a classification within the terminal and have remaining employees occupying lesser rated positions perform the work of the Technician. While it recognized that the Carrier had ceased hump operations at Howells and Tilford Yards, the claim asserted that Technician work remained in the terminal, and that the Claimant's position had also covered significant other territory outside the terminal.

The claim stated that prior to the Claimant's position being abolished, the former SCL had six Field Signal Technician positions after the Carrier had abolished other positions over the past few years, and that the positions had already been stretched thin before the current abolishment. It asserted that elimination of the Atlanta Terminal Technician position left a large geographical area of uncovered territory and assets. The claim requested that the Claimant be reinstated to his former Technician position and that he be paid the difference between the C&S Maintainer rate and the Technician rate for all hours worked from the effective date of the abolishment until the Claimant was reinstated as a Technician.

The Carrier denied the claim, stating that no agreement violation had occurred, as there was no evidence it had discontinued an established position and created a new one for the purpose of reducing pay. It stated that the classification of Signal Technician had not been eliminated, but that the Claimant's former position was abolished due to

the reduction in assets in the Atlanta terminal area with the closure of Tilford and Howells yards. The Carrier asserted that this instance was no different than when the L&N Technician position in the Atlanta Terminal was abolished and the incumbent exercised seniority.

The Carrier likewise denied that the Atlanta Terminal Agreement had been violated, pointing to language therein which addressed force reductions. It stated that the Atlanta Terminal Agreement does not restrict the Carrier from abolishing positions it deems to be excess in order to properly size the workforce, and that it has always retained the right to determine the size and composition of the workforce, unless restricted by agreement. The Carrier stated that what work was being performed is within the scope of Signal Maintainers, who are qualified to perform the work, and by the remaining Technicians on the former SCL. The Carrier asserted that it was within its rights to abolish the Claimant's Technician position when it was determined that position was no longer critical to maintain the remaining signal assets in the terminal.

The Organization submitted an appeal, again stating that the work associated with the Claimant's former position had been foisted upon employees in lower classifications. It stated that, even after operations at Howells and Tilford Yards ceased, most of the work performed by Technicians remained. It cited claims being filed by other employees who allegedly were performing work customarily performed by the Claimant. The Organization argued that, while the Technician classification had not been wholly eliminated throughout the Carrier's property, the abolishment had eliminated the classification in the Atlanta Terminal area. It added that the Technician classification requires a higher bar to qualify than is applicable to other positions, referring to statements from current Technicians.

The Carrier denied the appeal, again maintaining that no violation of the cited agreements had been established. It reiterated that it had the right to reduce the Claimant's position due to the reduction in facilities in the terminal area, and it denied that it was obligated to maintain the position or that it was in contravention of any agreement when it determined that the position should be abolished, citing award authority for the principle that deployment of the workforce is a managerial prerogative. The Carrier stated that many of the tasks associated with the Technician position are already being performed by Maintainers, consistent with their classification rule, and it noted that the classification rule pertaining to Technicians provides that Maintainers and other qualified signal employees are not prohibited from making tests, inspections and repairs as necessary. It added that a Technician may be called upon for assistance when needed for advanced technology issues, but that Maintainers can

otherwise perform the work in question. The Carrier also denied that there were any geographic holes or uncovered assets, stating that the remaining Technicians remain responsible. Additionally, it cited award authority as holding that the Maintainer classification may perform testing without the necessity of paying them the Technician rate.

The parties exchanged additional correspondence, essentially repeating condensed versions of the positions set forth above, before finally discussing the matter in conference, where they maintained their respective positions. The matter now comes to us for resolution.

The parties' positions before us are consistent with those set forth in the on-property handling described above. The Organization maintains its stance that the Carrier is attempting to eliminate the Signal Technician classification from the agreement by forcing the Claimant to a lower rated position, and forcing him and other Maintainers to perform Technician work for a lower rate of pay. The Organization denies that the Carrier can eliminate an entire classification and expect Technicians not covered by the Atlanta Terminal Agreement or Maintainers to perform the technician work. It points to six claims submitted by Maintainers who alleged that they were entitled under Uniform Rule 22 to the Technician rate when they performed technician work. The Organization asserts that the claims are further evidence that the technician work is still being performed.

The Organization maintains that Uniform Rule 11 was originally drafted to prevent such actions from occurring, but that the Carrier has ignored the rule requirement by eliminating the Technician positions and their work, and forcing the Claimant to a lower rated position, and then denying Maintainers appropriate compensation when they perform the technician work. It asserts that the Carrier's managerial prerogative is restricted by agreement in this instance.

The Organization asserts that the Carrier has failed to properly rebut or overcome the substantial evidence provided in support of the claim, including maps and statements, nor has the Carrier provided evidence to support its position. It states that the Carrier raised affirmative defenses that the assets were reduced, technology changed, and that other employees perform the work on a regular basis, but that the Carrier did not substantiate its arguments. The Organization states that, as it made out a prima facie case of an agreement violation, the burden shifted to the Carrier to provide rebuttal evidence and to prove its affirmative defenses, but that the Carrier failed to meet that burden. The Organization cites prior awards for the principle that cost

reductions must be accomplished within the framework of the applicable agreements, 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 Atlanta Terminal Agreement confirms the Carrier can abolish any position based on reduction in forces, which the Organization acknowledged the Carrier had done previously. The Carrier also emphasizes that the Technician position has not been eliminated, stating that six such positions remain after the abolishment of the Claimant's position. It cites multiple awards for the principle that the plain meaning of an agreement must be given effect, and it cites Section 7(b) of the Atlanta Terminal Agreement as specifically giving it the right to abolish any position. The Carrier states that there is no dispute that two yards in the terminal were closed, justifying the force reduction.

The Carrier also maintains that Rule 11 is inapplicable as there is no evidence that a new Maintainer position was established in place of the abolished Technician position, but rather the Claimant exercised seniority to an existing position. It reiterates that both job classifications can perform the work in question under the applicable agreement provisions, adding that the Organization did not dispute that assertion. It states that the Organization's efforts to establish a past practice regarding the work being performed by Technicians is off the mark in light of the plain language, which cannot be rewritten through the arbitration process. The Carrier also cites prior awards for the principle that, because both positions can perform the same work under the agreement, the work is not exclusively reserved to Technicians, which it asserts the Organization must prove to prevail. It adds that the Technician position in question was re-bulletined in June 2021, but that the Claimant did not bid on it, indicating that any liability should cease as of that date. 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 agreements. The applicable agreement provisions provide as follows:

Uniform Rule 11 – Preservation of Rates and Positions

Established positions shall not be discontinued, and new ones created under different title covering the same class of work for the

purpose of reducing the rates of pay or ending the application of rules in this Agreement.

Classifications

Electronic Communication and Signal Technician

An employee assigned to the duties of inspecting, testing, repairing and replacing electronic signal and communication apparatus and systems under the Scope Rule of this Agreement. When required, he may in the performance of his duties supervise and instruct other employees covered by this Agreement. This Rule shall not be construed as prohibiting Communication and Signal Maintainers or other qualified Communication and Signal employees from making tests, inspections and repairs as necessary, nor prohibit an employee classified as Electronic Communication and Signal Technician from performing other such duties as may be required.

Signalman/Signal Maintainer

An employee assigned to perform work generally recognized as signal work shall be classified as a signalman or signal maintainer. Signal work referred to herein includes the construction, installation, maintenance and repair work as covered in the Scope of this Agreement.

Atlanta Terminal Agreement

2. The initial forces for carrying out Signal work within the coordinated Atlanta terminal on the effective date of this Agreement shall be the positions identified below in Attachment C:

<u>Job Title</u>	<u>Positions</u>	<u>Former Property</u>
Inspector	1	SCL
Technician	1	SCL
Technician	1	L&N
Lead Maintainer	1	L&N
Maintainers	4	SCL

Maintainers	6	L&N
Maintainer	1	GA/AWP/WRA

7. Force Reductions

(b) In the event of a force reduction within the coordinated terminal area, the Carrier will have the right to abolish whichever position or positions it deems necessary. If, as a result of a force reduction, the forces working within the coordinated terminal become out of balance with the Allocation Table (Attachment B), the balance will be restored when additional positions are established.

As set forth above, Uniform Rule 11 explicitly prohibits creating a new position under a lower paying position to take the place of a higher rated position, but we do not find that to have occurred here. While there is no dispute that a Technician position is a higher paying position than a Maintainer position, and that the Claimant's Technician position was abolished, we find no evidence that a new position was created for the purpose of reducing pay. The record establishes that the Carrier did not create a new position in place of the Claimant's former position, but that the Claimant exercised his seniority to an existing position.

The Atlanta Terminal Agreement does set forth specific positions for the "initial forces," which included two Technician positions, but the Agreement also provides that, in the event of a force reduction, the Carrier has the right to abolish whichever positions it deems necessary. There is no dispute that two yards within the terminal ceased operations, but we are not convinced that the Carrier was restricted from reducing forces even if that had not occurred or that any other criteria must be met before such a reduction can occur. We find no agreement provision which requires a certain number of employees to be assigned in any particular classification regardless of the number of yards operating in the terminal. In the absence of an agreement restriction to the contrary, we believe the Carrier had the discretion to determine how it would staff its signal forces.

It is also evident that the Carrier did not eliminate the classification of Technician when it abolished the Claimant's position. There is no dispute that other Technician positions remain in place on the SCL property, which includes the Atlanta Terminal. While the Organization's concerns about the size of the territory of those remaining employees and the importance of the Technician position are certainly legitimate, in the absence of any agreement limitation on the size or location of a Technician's territory,

we cannot impose a requirement that more Technician positions be established, that specific ones be maintained, or that one has to be headquartered in the Atlanta Terminal.

We also do not believe that the fact other claims have been filed impacts the validity of the claim before us. Although those claims assert that maintainers were required to perform technician work and that they were entitled to Technician pay, there is no indication that the Carrier agreed with the allegations in the claims or that they have ever been adjudicated in the Organization's favor. We note, however, that under the classification rule, the work of Technicians and Maintainers is overlapping in many respects. Those rules also state that Maintainers are not prohibited from making tests, inspections and repairs as necessary. In any event, we are not called on to decide the legitimacy of those claims here. We only consider the fact that more claims were filed to be consistent with the Organization's objections to the abolishment of the Claimant's Technician position, but they are not proof of any violation. We also do not find the awards relied on by the Organization to involve circumstances analogous to the instant case so as to require a different conclusion.

Based on our review of the record and the parties' various assertions, we do not believe that the burden of proof, which is initially on the Organization in such matters, ever shifted to the Carrier in these circumstances. To the extent it did, we believe the Carrier adequately established that its actions were not prohibited by any agreement provisions. 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.