

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45058
Docket No. SG-45784
24-3-NRAB-00003-230320**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 S. R. Fox, A. G. Province, and E. J. Topole, for ten hours at their respective straight time rates of pay; account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and CSXT Agreement No. 15-018-16, Section 4, when on June 4, 2019, July 7, 2019, and July 9, 2019, Carrier allowed non-covered Carrier Officers to perform scope covered work involving a signal cantilever and impedance bonds at Control Point 73 and Control Point Penn, resulting in a loss of work opportunity for the Claimants. Carrier's File No. 18-18169. General Chairman's File No. 18-93-CD. BRS File Case No. 16167-C&O(CD). NMB Code No. 32.”

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 dispute in this case is over the Organization's position that Carrier managers improperly performed scope-covered work reserved to Agreement-covered employees.

The Organization asserts that on June 4, 2018, a Carrier Officer climbed a signal bridge to perform work on a new signal cantilever; on July 7, 2018 a Carrier Officer cut ties to set an impedance bond; and on July 9, 2018, a Carrier Officer performed signal work at a cut-in. The Organization asserts that this all was scope-covered work performed in violation of the Scope Rule.

With respect to the June 4, 2018 work, the Carrier's evidence shows that the Officer was approached by the Lake Shore Railway Historical Society about signal heads and the Officer instructed a Signal Team to complete the work of removing four signal heads so that they could be displayed at the Historical Society's museum; the Officer did not want the signals bent or damaged and he climbed a retired signal bridge and not a new cantilever in order to ascertain the condition of the signals and whether they could be safely removed; and he instructed the signal team to perform the work, but retrieved hardware for delivery to the museum staff.

With respect to the July 7, 2018 work, the Carrier's evidence shows that the Officer arrived at the scene to review the work performed; saw it was deficient and potentially hazardous; discussed potential modifications with Claimants to be made to the project; made the modifications accordingly explaining that if something went wrong he could shoulder the blame; and all Claimants were working the entire length of the project and did not lose any work.

With respect to the July 9, 2018 work, the Carrier's evidence shows that the Carrier's Officer was training an employee on how to properly call signals.

With respect to the June 4 and July 9, 2018 work, the Organization has not demonstrated that a Carrier Officer improperly performed scope-covered work on those dates. The record with respect to those dates is in conflict. The Organization has the burden to demonstrate the violation and a record in conflict does not meet that burden. Third Division Award 43036:

“Giving the Claimants the benefit of the doubt, at best, the record in conflict. A record in conflict is not a record that supports the Organization’s burden to demonstrate a violation of the Agreement”

However, with respect to the July 7, 2018 work, the Carrier Officer’s August 30, 2018 statement provides [emphasis added]:

“On July 7, 2018, I was inspecting the progress on PTC Phase 9 of the Philadelphia Subdivision in preparation for a signal cut-over on July 9. At CP Penn the signal design called for the installation of 4 impedance bonds on an open timber bridge deck over the Schuylkill River. Upon my arrival the team which had originally installed the bonds had them mounted upside down on the bridge timbers in the gauge of the track, leaving them projecting upward approximately 8”, creating both a tripping hazard and potentially subjecting them to damage from train operations. I determined that the safest and best course of action was to mount 2 bonds along the side of the bridge walkway, and to mount 2 bonds that are in a turnout between the bridge ties. Force 7XF9 was tasked with moving the bonds to the walkway, which they did without incident, but it was determined that the bridge ties would need to be dapped in order to accept the other pair of bonds, due to close spacing of the bridge ties. Signal Force 7XF9 offered to dap the ties with a chainsaw from their team’s truck, but they were unsuccessful in getting the saw to start. As an alternative means of modifying the ties I went to a nearby hardware store and procured a Sawzall reciprocating saw and a selection of saw blades. Upon my return, the claimants and I together measured and marked the ties for the dap that would be required, and it turned out to be a fairly substantial amount of material to be removed. Realizing that an engineered and approved drawing didn’t exist, and that the local Bridge Manager may take exception to the tie modification, I told the claimants that I would handle the cutting, so as they couldn’t be charged if in the future if the tie alteration became an issue. The claimants were standing there throughout the process, offered suggestions and insight about modifying the dap, and placed and removed the impedance bond on multiple occasions as the trial and error fitting process continued for approximately 1 hour. ...

Although the Carrier Officer’s motives were well-intended (“I told the claimants that I would handle the cutting, so as they couldn’t be charged if in the

future if the tie alteration became an issue”), the Carrier Officer nevertheless admittedly performed scope-covered work inconsistent with the Agreement (“the claimants and I together measured and marked the ties for the dap that would be required, and it turned out to be a fairly substantial amount of material to be removed”) and as earlier noted, the Carrier’s Officer performed the cutting.

This Board has a broad degree of discretion to formulate remedies. See e.g., First Division Award 26088 (“... in the formulation of remedies, it has long been held that arbitration tribunals have substantial discretion for crafting a remedy to fit a particular circumstance”); First Division Award 27865 (“[t]he Board has broad discretion to formulate remedies”).

Under the circumstances of this case and in the exercise of this Board’s discretion to formulate remedies, the only remedy shall be that in similar circumstances, the Carrier’s Officer is instructed not to perform scope-covered work. There shall be no monetary relief in this case because the Carrier’s Officer was working with Claimants who were present when the work was performed; the amount of time involved in doing the work was not significant; and the Claimants lost no pay or real work opportunities as a result of the Carrier’s Officer effectively covering for them in the event the work performed became an issue. To hold otherwise would only validate the saying that “No good deed goes unpunished.”

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 31st day of October 2023.